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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ORGANIZATION

TUESDAY, 9 MAY 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Keyes, Kenneth A. (Kingston and The Islands L) for Mr Mahoney

Nixon, J. Bradford (York Mills L) for Mr Chiarelli

Sola, John (Mississauga East L) for Mr McGuinty

Clerk: Arnott, Douglas

Assistant Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, 9 May 1989

The committee met at 1535 in room 228.

ORGANIZATION

Clerk of the Committee: It is my duty to call upon you to elect a chairman. Are there any nominations?

Mr Sterling: Bob Callahan.

Clerk of the Committee: Are there any further nominations?

Mr Sterling: Norm Sterling.

Interjections.

Clerk of the Committee: There being no further nominations, I declare Mr Callahan the duly elected chairman of this committee.

The Chairman: We have an election for the vice-chairman. Do I have any nominations for vice-chairman?

Mr J. B. Nixon: I will nominate Bob Chiarelli.

The Chairman: Are there any seconders?

Assistant Clerk: You do not need a seconder.

The Chairman: Oh, we do not need a seconder. Any further nominations for vice-chairman? Seeing none, I declare Mr Chiarelli vice-chairman.

Mr Polsinelli: I have a motion.

The Chairman: Mr Polsinelli moves that unless otherwise ordered, a transcript of all committee hearings be made.

Motion agreed to.

The Chairman: The next item is an agenda which is before you. We have gone through the first two items. I would like to have a motion regarding establishing a subcommittee.

Mr Kanter moves that himself, Howard Hampton and Norm Sterling do compose a business subcommittee; that the said business subcommittee meet from time to time at the call of the chairman to consider and report to the committee on the business of the committee; that substitution be permitted on the business subcommittee; and that the presence of all members of the business subcommittee is necessary to constitute a meeting.

Did Hansard get that?

Mr Kanter: We have it in writing.

The Chairman: Thank you. Is there any discussion on that motion by Mr Kanter?

Motion agreed to.

The Chairman: I wonder if we might—that subcommittee—I do not see Mr Hampton here now. I am wondering if we could set a time for that meeting, perhaps today or at some other more convenient time. I think it is important we get our agenda.

Mr Kormos: Mr Hampton will be here shortly.

The Chairman: Will he? So he would be available for a subcommittee meeting, if we were to have one today.

Mr Kormos: Perhaps. Just hold off on that until he gets here.

The Chairman: All right.

Mr Offer: One of the items not on this outstanding matter sheet is that concerning the Henderson report. I am wondering if we can have that inserted as one of the matters, so that it would be available for discussion and determination by the steering committee?

The Chairman: All right.

Mr Sterling: I would like to support that and I would also like to indicate our party considers the Henderson report more important than any of the other four pieces of legislation that are in place there. I would like that on record, so that it will be the position I will be taking with regard to the subcommittee and so that there will not be any confusion in the mind of the Attorney General (Mr Scott) as to where we stand on this particular issue.

The Chairman: Any further comments?

Mr Polsinelli: I am sure Mr Sterling is aware that we attempted to deal with this issue during the break, but unfortunately, we were not able to get the consent of the House leaders. I would agree with him that this item should take priority in our deliberations. I would suggest perhaps that what the subcommittee could do is establish a definite date to deal with this report and ensure that, at that time, the representative of the provincial court judges—Mr. French, I believe—be allowed an opportunity to address the committee while we are having our deliberations.

The Chairman: Further comments?

Mr Kormos: Further to that, our House leader was prepared to consent to it, but I got the impression, from the Attorney General's announcement at the beginning of last week, that the matter of the Henderson report and its discussion by this committee—the impression we got was that was to have priority.

Our question would be: why would that not be first on the list of matters to be considered, especially in view of the fact that there is clearly some unresolved tension between provincial court judges and their association and the government, as a result of the announcement that was made last Friday? And, as I say, there appears to have been a commitment on the part of the Attorney General to resolve the balance of it by virtue of this committee

discussing that. It would be timely to have that first on the list of matters to be considered. It would be timely, it would be appropriate and it would be consistent with what was already said in the Legislature.

The Chairman: All right. If that expresses Mr Hampton's feelings, we may be able to avoid the necessity for a subcommittee meeting.

Mr Offer: Just to indicate, as the members know and it has been indicated earlier, the Attorney General was always very anxious for this committee to deal with that report, and we made all efforts to have that report dealt with—and Mr Chairman will know that—during the time the House was recessed.

I think it is important that we deal with the report as soon as possible. That is why, at the first instance, I made certain that the Henderson report was one of the items as an outstanding matter. It was not on the sheet before the committee members.

I think that it will certainly be the subject matter of how best it should be approached by the steering committee and who should be invited to respond to the report during the steering committee meeting. We are looking forward to dealing with the content of that report. It was a very important report and we look forward to that deliberation.

Mr Sterling: I have heard that speech before. It was nice to have the government being so concerned about this five and a half months after it tabled it in the Legislature and it was brought to the attention of this committee by me on 10 March. Notwithstanding that, I want to get on with it.

I want it clear that my position in the subcommittee will be that we deal with that first, and I am not willing to listen, quite frankly, to another argument behind closed doors. I would prefer the argument to be placed in public, so that the judges across the province will, in fact, know where the government stands on the issue. They have sort of hidden in behind the subcommittee on it and I think it is just as well we have an open meeting on it and decide the priorities right here and now.

I would say on another matter, Bill 149, the amendment to the Trespass to Property Act will require, in my view, public hearings and public hearings outside of the city of Toronto as well, and therefore I suggest that probably that particular matter could wait until the summer as far as our party is concerned. I have had a number of requests from outside of the city of Toronto from groups that want to appear on this particular bill.

Mr. Offer: In terms of the Trespass to Property Act, I think the point raised by Mr Sterling is one that is very valid. I think it is well taken in terms of the interest in those amendments to the trespass act and the real possibility of this committee having to travel on that bill. It may very well be that in order to properly and fully discuss that bill it would be the subject matter of travelling and as such would be dealt with in a more exhaustive manner during the summer recess, whenever that takes place.

Mr Sterling: Could I ask the clerk, in terms of Bill 187 and Bill 4? I know on Bill 187 we had completed the public hearings. Have there been any requests subsequent to those hearings by groups that might want to appear at this stage of the game? We did not start clause-by-clause, as I understand it. It is just a matter of information that I wanted from you.

Assistant Clerk: No, we have no one on the witness list who has indicated a desire to appear. We do, however, have several written submissions that the committee has not received yet.

Mr Sterling: On Bill 4, how many groups are going to—

Assistant Clerk: Sixteen.

Mr Sterling: Sixteen? I thought it was 60 at first.

The Chairman: Makes a big difference in your age.

Mr Sterling: Are they all Toronto groups?

Assistant Clerk: Not all of them, no. Most of them are, but some of them are from outside of Toronto.

Mr Offer: To carry on from that point, when there was publication, there was a deadline date?

Assistant Clerk: That is right.

Mr Offer: Which was? I cannot recall what was the deadline date.

Assistant Clerk: All briefs to be deposited with the clerk no later than Monday, 1 May 1989. That is written briefs. Requests for appointments to appear before the committee in Toronto not later than Friday, 31 March 1989.

The Chairman: Any further discussion?

Mr Sterling: When would we be—

The Chairman: We will meet in our usual pattern, which will be next Monday after routine proceedings.

Mr Sterling: So we will be meeting on Mondays and Tuesdays after proceedings.

The Chairman: Mondays and Tuesdays at the moment. I should indicate that Mr. Arnott will be our clerk. Mrs Deller is leaving us.

Is there any further discussion by any members of the committee? If not, I wanted to just put something on the record.

Mr Sterling: I just wanted to—I am quite willing to meet with the subcommittee tomorrow, but I do not think there is any necessity to do that.

The Chairman: If Mr Kormos is speaking—and I gather from Mr Hampton he is—perhaps I could inquire of Mr Offer whether or not he considers it is necessary for us to have a subcommittee meeting. I think probably it might be of some help in not just the agenda but also perhaps how we deal with the agenda.

Mr Kormos: To make it clear, yes, I speak for Mr Hampton and myself when I indicate that we want the Henderson report to be considered first before any other business. I also do want to indicate, on behalf of Mr Hampton and myself, that with respect to Bill 187 we would expect that a clause-by-clause consideration would be a relatively lengthy procedure. In

view of the frequency of meetings, two weeks would be necessary for that.

Then speaking of Bill 4 and hearing submissions to the committee, we would suggest that would require at least four days in view of what we have been told, 16 submissions, and there may well be others seeking permission to speak to the committee in view of the fact that this committee is only just now sitting once again here in Toronto. There may have to be consideration of expanding the list of named parties or persons who wish to make submissions.

1550

The Chairman: Those would normally be some of the items that we would discuss in a subcommittee meeting. We have already had advertising. We have in fact visited Thunder Bay, Ottawa and Windsor.

Are you talking about Bill 4? If you are suggesting a reopening of that and readvertising, if that is the situation, I think that is something that would certainly be the subject matter of a subcommittee meeting, as opposed to all of us.

Mr Kormos: I am not specifically suggesting that now. What I am indicating is that, in view of the fact that this committee is meeting once again here in Toronto, at Queen's Park—

The Chairman: Oh, I see what you are saying.

Mr Kormos: —there may well be parties or persons seeking to take advantage of this committee sitting here to make submissions, parties or persons who have not submitted their names before—I believe it was 31 March.

The Chairman: So you are suggesting some form of readvertisement, are you?

Mr Kormos: I am not at this point suggesting readvertising, I am saying that people, of their own desire, may be coming here wanting to make submissions knowing that the committee is sitting here at Queen's Park. I would certainly be interested in hearing from them, notwithstanding that they did not file their intentions prior to 31 March.

Mr Offer: I think—

The Chairman: I had Mr Kanter first, Mr. Offer.

Mr Offer: Oh, sorry.

Mr Kanter: I think that the tenor of this discussion does indicate that a steering committee meeting would be useful. It is the normal course, as I understand it, to decide detailed scheduling matters. I think all parties have indicated their desire to have the Henderson report heard fairly early as a priority matter, but I think there might be questions of detail.

For example, there has been some indication that we would like to provide an opportunity for a representative of the provincial court judges to address this committee. It may take some days or perhaps even as long as a couple of weeks to arrange a convenient time for that particular individual to appear before this committee. I think these are the kinds of decisions, back and forth, requiring close contact with the clerk of the committee—I understand it is going to be Mr Arnott—so I would like to speak in favour of

the usual course, which I think would be the wise course, which would be to set up a subcommittee to deal with the details.

I think the general outline of hearing the Henderson report fairly early on, hearing Bill 187—and I appreciate the information that has been provided about how long that might take in the view of one of the opposition parties, and the fact that there are going to be at least 16 more deputants on Bill 4, I think that is all useful information, but in terms of a detailed ordering of a day-by-day agenda, I think that is the kind of job that can best be accomplished by a subcommittee meeting.

The Chairman: The only way we could do it would be either by motion or unanimous consent, and I gather from the discussion that has gone on there is not unanimous consent, so perhaps we could get a motion put on the floor so that we are discussing a motion in fact, and then we can deal with Mr Sterling.

Mr Sterling: I move that we begin considering the Henderson report on Monday next at our next regular meeting, since we will not be able to have a meeting to confirm what the subcommittee might decide tomorrow, as a first part of my motion; and that we gain advice from the Attorney General, or the clerk, together with the Attorney General, as to who might be the appropriate witness—I suspect that it would be somebody from the ministry or somebody who has been involved in writing the Henderson report, maybe Mr Henderson himself or one of the people who worked on that particular report—to brief us on the content of the Henderson report.

The second part of the motion would be that we have a subcommittee meeting tomorrow after question period to work out other details to progress from there on.

The Chairman: Perhaps we could have that in the form of two motions.

Mr. Sterling moves that the committee begin considering the Henderson report on Monday next at its first regular meeting and that the committee seek the advice of the Attorney General and the clerk as to the appropriate witnesses.

If I understood what Mr Kanter was saying—Mr French represented the provincial court judges and may very well wish to come before us to provide us with information—I do not want to put words in his mouth, but I thought what he was saying was we do not know when Mr French is available.

Mr Sterling: I am just saying the worst that could happen is that he would not be available and we would come here next Monday and then discuss the schedule. If we do not have a motion to go ahead, then we will again be putting ourselves back.

Mr Offer: Why would we not sit down as a steering committee? We are all agreed as to the necessity of dealing with certain matters, but why would we not, as a steering committee, sit down and say, "Listen, if we are going to be dealing with the Henderson report, what is necessary for us to start dealing with it?" Obviously, there will be some people we will want to have before the committee, so in terms of the formation of a steering committee to set the agenda, of course, there is no problem with that but—

The Chairman: Are you speaking to the second motion? I gather Mr Sterling has split the motion.

Mr Offer: Yes, but in terms of the first, we are going to deal with the matter on Monday and also have a steering committee as the second portion to see how we will deal with the matter. It seems we are putting the cart before the horse in this matter. I think it should really be the steering committee that determines what we should be dealing with and whom we should be inviting and checks out the availability of that person or persons to come before the committee on a particular day or days, and on that basis we would set the agenda.

I just think that by setting the date and then finding out that no one can come on that date, we are hamstringing the whole committee in terms of other matters. As such, I have no problem with the second part of the motion, but I do have some concerns with the first part.

Mr Kanter: I am just going to echo the comments of Mr Offer. I think we should hold the subcommittee meeting tomorrow. We can consider the possibility of having this item on the specific date Mr Sterling suggested, but I think it is the kind of thing where we have to check the availability of people. There is a lot of business before this committee. I, for one, would not like to lose next Monday if it turns out officials are not available.

As Mr Kormos said, we have a lot of work to do on Bill 187. I think the appropriate thing to do would be to have the subcommittee meeting first. As you know, the deliberations of that subcommittee return to the full committee in public. If we cannot reach a consensus on scheduling, we can have it all out in public again. Personally, I hope we will be able to reach a consensus because I think the underlying concerns of all three parties are very, similar. We want to do the Henderson report, but we want to do it with a full hearing from whatever parties may be appropriate to be heard before this committee. I would support the second part of Mr Sterling's motion, but I ask that we reconsider the first part.

Mr Sterling: The problem, of course, is that the subcommittee does not set the agenda. It suggests to the committee what the agenda should be. Then they come to the committee and ask for its approval of that agenda. In effect, what we do is waste a day. I am trying to avoid wasting a day.

The government has indicated or said it was concerned about the time of this committee and getting on with the business. I would like to get on with it. I do not want to be sitting here in August on these particular matters and be pressed if there is other legislation that is going to come down the tubes, which probably is going to be more important than some of this legislation here.

The worst that can happen is that we cannot get Mr French, we cannot get anybody, so we meet here on Monday and carry on with something else the subcommittee has figured out we can do. I do not know what else we can do by Monday; perhaps Bill 187. I was just trying to get us on track so we do not have to meet here next Monday to approve what the subcommittee has done and waste a day and then meet on Tuesday.

The Chairman: We could do clause-by-clause on Bill 187, because we have had the public hearings.

Mr Sterling: But there were other people involved in that particular bill when it was brought here. Mr Hampton and—I forget who the other member for the New Democratic Party was. It was not Mr Kormos.

Assistant Clerk: Mr Farnan.

Mr Sterling: Mr Farnan. I do not know whether he is available on that particular day, so there may be conflicting schedules on that.

1600

Mr Offer: That is exactly the reason we have a steering committee meeting, to see who is going to be available, to see who you want in terms of, let's say, using the example of the Henderson report, seeing whether those persons are available and then to set the agenda. Then you would have some real unanimity with the committee.

Mr Sterling: My prediction is we would waste time.

Mr Kormos: It seems to me all Mr Sterling says in his motion is that, subject to there being unavailability of somebody on Monday—unavailability of anybody on Monday—we commence consideration of the Henderson report. Surely there are people from the Attorney General's office. It is not incumbent upon Mr French being available. There are people from within the ministry who could commence their comments on it. It is not a matter of waiting for Mr French. That is the only way of ensuring or guaranteeing that it gets first priority, which everybody appears to be committed to.

The Chairman: I am not clear at this point whether Mr Sterling wishes to withdraw his motion or it could be rephrased in the wording you have suggested, or do you want us to vote on the motion?

Mr Sterling: It does not really matter. If the witnesses cannot appear, we cannot have a meeting.

Mr Polsinelli: Is your motion that if the people can come Monday, we will deal with it Monday?

Mr Sterling: That is right.

Mr Polsinelli: Why do we need a motion? Why do we not just do it?

Mr Sterling: He asked me for a motion.

The Chairman: No, I did not. I said that—

Mr Polsinelli: If the steering committee establishes that the witnesses are here—

The Chairman: Just a second. Wait. Mr Polsinelli, just so I can be clear, I gathered from the comments that were going on around this table that we were not going to get unanimous consent. Therefore, I asked you to put a motion on the floor so we had something we could discuss. If I gather from this that we have unanimous consent along those lines, then we can deal with it by way of unanimous consent and we need not get into—

Mr. Offer: I just want to be very clear as to what—

Mr Sterling: My intent is that we deal with the Henderson report,

subject to the availability of witnesses to appear before the committee to inform us of the contents of the Henderson report.

Mr Polsinelli: I would even add further that we deal with it as quickly as possible, subject to the availability, obviously, of those individuals.

The Chairman: What if they are not available?

Mr Polsinelli: Then we cannot deal with it.

Mr Sterling: Then the subcommittee will have to decide what we can do next Monday.

The Chairman: You are suggesting that the subcommittee sit to deal with whatever else we would deal with in place of that if nobody is available. Is that what you are saying?

Mr Sterling: I think the subcommittee is going to have to come back on Monday and report what it wants us to do.

The Chairman: I understand that, but I just want to be clear. We now have unanimous consent, do we, to the fact that we will deal with the Henderson report on Monday, subject to the availability of witnesses, and that the subcommittee will meet in the interim to discuss the further business or the business of that day if the witnesses are not available? Is that the—

Mr Offer: It seems what we are saying, what would cut through it all, is that we would like to start to deal with the Henderson report on Monday. However, we also agree that there are going to have to be some witnesses of some kind to come to this committee on that matter.

It follows that we do not know whether they are available, and we are not even certain who they are at this point in time, so what we want to do first in the interim is have some understanding who it is we want to come before the committee on the Henderson report, and second, to find out whether they are available. If those two points can be met, then we can start to hear it on Monday. If there is something missing in there—

The Chairman: I think we have to give the clerk some specific direction. We cannot just say "witnesses" and leave it up to Mr Arnott whom to invite. If you are going to name them—

Mr Sterling: Mr French or somebody from the Ministry of the Attorney General.

Mr Polsinelli: I would say we would want as witnesses Mr French—he should be our first witness to give the reaction of provincial court judges to the report—and we should also have a representative from the Ministry of the Attorney General who is familiar with the report. I would see those two individuals as being essential to our commencing our deliberations.

The Chairman: Do we have unanimous consent? Do I hear unanimous consent or do I hear dissent?

Interjection: You hear nothing.

The Chairman: Hearing no dissent, I assume we have unanimous—

Mr Kormos: But not necessarily in that order. People from the ministry can come and relate their impressions of the report before we understand what provincial judges' reactions are to it. To delay it on the basis of Paul French not being available would be really—

The Chairman: I did not read Mr Polsinelli as putting them in any form of order, so I do not think that is necessary. Is there unanimous consent that is how we will proceed?

Agreed to.

The Chairman: All right. I am not quite sure whether we have unanimous consent whether a subcommittee should meet to deal with the further business of the committee at this time.

Interjection: We have a motion.

The Chairman: I think Mr Sterling has withdrawn his motion.

Mr Sterling: I think we agreed on that.

The Chairman: I gather we are now dealing with it on the basis of unanimous consent that the subcommittee meet right after this meeting to address the balance of the agenda or at least the next item.

Mr Kanter: Can we do it today?

The Chairman: Is Mr Hampton going to be available? I think you said he was, Mr Kormos.

Mr Kormos: He is going to be available.

Mr Sterling: We either do it today or—

The Chairman: Well, either today then, or tomorrow after routine proceedings.

Mr Sterling: If he is available now—

Mr Kormos: I could substitute.

The Chairman: I think Mr Nixon wanted to leave and I think probably there is no problem in that regard. All right. We have unanimous consent, then, on both those items. There is one further thing I would like to—

Interjections.

The Chairman: Mr Keyes, I would like to clear the air, I think, in fairness to the clerk who is now leaving us, and perhaps to myself without losing the integrity of being nonpartisan in the chair. We wished to deal with the Henderson report during the break and I had attempted to arrange with the clerk for a subcommittee meeting. We were not able to do that, so I think there can be no items of which it can be said about the clerk not attempting to have us do that, nor of the chairman. As far as the rest of you gentlemen are concerned, you can fend for yourselves.

Mr Runciman: We have never criticized the clerk.

The Chairman: All right; okay. Having said that, is there any further business before this meeting?

Mr Kanter: Just before it adjourns, I would like to say something with respect to the clerk who is departing, Deborah Deller, who served this committee during most of the time I was a member. We had some hearings on a subject that was somewhat contentious. I think she was steady, persevering, fair, unbiased, jovial, and kept us reasonably well fed and reasonably well housed, although there were some exceptions, and even—I want to be delicate how I phrase this—made it possible for us to slake our thirst occasionally from time to time. I think she did an outstanding job and I would just like to say on my part and I think on behalf of all members of all parties, I want to just congratulate Deborah and wish her well in her new committee assignment.

The Chairman: How about a round of applause?

[Applause]

Mr Kanter: It will appear in Hansard.

The Chairman: With that recognition, Debbie, you realize the shoes that have to be filled, but I am sure Doug Arnott has been around and has done an excellent job and will serve us well.

Any further business before this—

Mr Sterling: I would just like to say ditto.

The Chairman: Any further items other than ditto?

The committee adjourned at 1608.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988

MONDAY, 15 MAY 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

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Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Association of Provincial Criminal Court Judges:

French, Paul J., Legal Counsel

From the Canadian Bar Association:

Bliss, Harvey

Rubel, Howard, Chairman, Provincial Judiciary Committee

From the Criminal Lawyers Association:

Levy, Earl J., President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, 15 May 1989

The committee met at 1544 in room 228.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988

The Chairman: I recognize a quorum. We have Paul French before us today. Mr French, would you come forward. We are dealing today with the matter of the Henderson report. You have all had bound copies of it. I believe it was Mr French who made a number of items available to us, basically the recommendations that were contained in the report together with a chronology of certain other reports and how this report came about, plus some thrust. Do you have that, Mr Sterling? I think it is coming to you right now.

I should indicate, Mr French, that we are advised there will be a vote in the House at 5:45 pm. The standing orders require the chairman, upon the bells being rung for a vote, to adjourn the sitting for the day, but we will be sitting again tomorrow. It will be basically the same time frame, after routine proceedings and until six o'clock. Then we will not sit again until the following Monday and Tuesday.

These are the directives we have from the Legislature. We are under those directives by reason of the standing orders. Perhaps without further ado, you would like to—excuse me just a second. Mr Sterling?

Mr Sterling: In order to try to determine what our committee might or might not do with these recommendations, I contacted the clerk of the justice committee of the House of Commons. That committee has gone through the same kind of process, in March 1987. I got a copy of their report with regard to the recommendations relating to federally appointed judges.

If you look at the report, there are only three recommendations, on one sheet of paper. Therefore, I thought we might take our lead in some ways from that particular document, unless we find some issues that require being dealt with in a lot more depth. I just thought it might be useful to have this copied and sent around.

The Chairman: Maybe you would make that available and the clerk will distribute it. I think at the moment we would like to hear what Mr French has to say and then we can proceed from there. I understand there may be a couple of other people who it may be suggested might wish to speak and at the appropriate time I will ask the committee what it wishes to do in terms of hearing from those people.

Mr Sterling: On one other point, I point out that the justice committee had only one witness in front of it with regard to those hearings when it undertook the hearings. If we want to mirror that particular image, we might not want to have an extensive number of witnesses.

The Chairman: I think we still have some degree of freedom here in Toronto and that we need not follow Ottawa without some degree of autonomy.

Mr Sterling: Okay.

PAUL FRENCH

Mr French: Mr Chairman and members of the committee, with your indulgence, I have asked my colleague and associate Bill Chalmers to sit with me to assist me as we proceed. Mr Chalmers has worked with me for quite some time on behalf of the matters concerning the provincial court judges.

thank you for inviting me to come and speak to you of the Report of the Ontario Provincial Courts Committee and of the provincial court judges of Ontario.

In addition to being here in my capacity as counsel to the provincial court judges of Ontario, I have also invited to attend—perhaps, Mr Chairman, in due course you can consider the opportunity for some individuals to speak. I think specifically of Earl Levy, who is president of the Criminal Lawyers Association of Ontario—I anticipate he will be able to join us shortly—and then Howard Rubel who is the chairman of the provincial judiciary committee of the Canadian Bar Association. There is also Harvey Bliss who is the immediate past president of the Canadian Bar Association—Ontario.

I propose in the latter part of my submissions, if you agree, to ask them to speak very briefly to the members of the committee. I have told them of your time constraints, and were you inclined to hear from them, I have asked that they attempt to limit their remarks to a very few minutes directed to the report from a very general perspective.

The Chairman: That is a tough directive for a politician or a lawyer, to make brief comments.

Members of the committee, you have heard the request. Do you have any difficulty with that request? Do we have unanimous consent to hear from these other gentlemen, time permitting?

Mr Kanter: Yes.

The Chairman: Hearing no dissenting voices, you can proceed, Mr French.

1550

Mr French: My personal background is that of a lawyer and I am with the law firm of Hughes, Amys. I have been a lawyer for about 15 years, have been involved with the provincial court judges for about eight to nine years and am very familiar with the Report of the Ontario Provincial Courts Committee and with the concerns of the provincial court judges in respect of it. On occasions before this, I have had the opportunity of speaking to Mr Elston, Mr Scott and Mr Conway with respect to this report, and also to Mr Cooke, Mr Hampton and Mr Sterling, and in a very general sense I have had some contact with some of the members with respect to the issues that arise from this report.

In a very general way, I see my role here as assisting you in answering three questions: What is the Henderson report? What is it doing on my desk? What should I do with it? In addressing those very general questions, I hope I may be able to identify the issues that arise from the report, hopefully

identify for you some of the key questions that have to be considered with respect to those issues, and hopefully assist you in answering those questions.

Very briefly, the Report of the Ontario Provincial Courts Committee, the Henderson report, is a comprehensive report containing an analysis of and recommendations concerning financial matters affecting the provincial court judges in Ontario. It is the culmination of a decade of compensation-related work by various committees that have looked at issues affecting the provincial court judges.

The committee was composed of Gordon Henderson in Ottawa, Bill Hamilton from Guelph and Mary Eberts from Toronto, all three of whom are lawyers who enjoy significant reputations in the legal community. They looked into the matters entrusted to them by way of a hearing process that was in the nature of a public inquiry conducted across Ontario. They conducted public hearings in five centres throughout Ontario and received about 49 submissions from various interested persons and groups. In addition to that, they had the opportunity of receiving voluminous submissions from the government of Ontario and correspondingly voluminous submissions from the provincial court judges.

The government of Ontario took positions before the committee as did the judges, and the committee assessed, evaluated and analysed those positions and came forward with its recommendations. If you have had the opportunity of considering the Henderson report, I think you will agree with me that it is a well-written, well-researched and well-documented study of compensation issues affecting the provincial court judges.

The Chairman: Pension sections are a little tough to get your head around, but I agree.

Mr French: The pension section was difficult for the members of the committee. They were assisted by an actuary by the name of Martin Brown of the Wyatt Co who is an expert in the area. They were also assisted to some extent by the chief government actuary. The only witness who was called either by the judges or the government was in that area and it was Mr Brown, the actuary. He gave evidence over a period of about two days. Eventually, I think the committee distilled the pension issues into a very brief and succinct recommendation that I propose to touch on and hopefully assist you with.

In so far as the report itself and the second question—what is it doing on my desk?—is concerned, I think the simple answer is that the judges and the government of Ontario agreed you should look at this report. The agreement between the government and the judges is reproduced at pages 141 through 143 of the report. It might be useful to look at it very briefly to see the mandate that was given to the standing committee on administration of justice with respect to these issues.

I refer you in particular to page 142 of the report. Paragraph 6 of the agreement between the government and the judges simply provides, "The report of the provincial courts committee must be tabled in the Legislature and referred to the standing committee on administration of justice, as provided in subsection 88(4) of the Courts of Justice Act."

Then in paragraph 7 it says, "Following receipt of a report of the committee and its tabling and consideration by the standing committee on administration of justice, the government would table legislation establishing the salaries of provincial judges as of April 1, 1987."

As I see it, your mandate is to satisfy the requirement that the report be considered by you. At least, those were the terms of the agreement between the government and the judges.

I would like to tell you very briefly why it is the government and the judges agreed the justice committee should have a look at this report. In the material I have submitted to you, there is included a two-page document headed "Chronology."

The Chairman: For members who have just come in, there is a package of material before you, and if you look through it, you will see that chronology just about towards the end, just prior to "Judges' Salaries."

Go ahead, Mr French.

Mr French: I offered the chronology to assist in understanding why it is that the Henderson report is before the justice committee. The chronology purports to set out on a selective basis a history of compensation-related issues that have affected the provincial court judges.

Very briefly, the genesis of the problem has been in salary-related or compensation-related issues. You will see that commencing in 1968, it was suggested that the judges of the provincial court be paid the same salary as judges of the district court, so from year to year there have been various declarations and pronouncements with respect to the financial matters affecting the provincial court judges.

Initially, the question of what it was the judges should be paid was determined by the Attorney General. The Attorney General correctly found that inappropriate. It was obvious his agents were appearing before those judges on a regular basis and he ought not to be seen to be capable of exerting any influence over the provincial court judges.

The task was then entrusted to the Chairman of the Management Board of Cabinet, but that was found to fit uncomfortably with that office because it was not intimately familiar with all of the justice-related issues.

There was then tried a tripartite committee consisting of the Treasurer, the Attorney General and the Chairman of the Management Board of Cabinet, but that never really worked either. It was very difficult to accommodate their busy schedules.

Then there was an attempt made with the Premier and his advisers dealing with the issue, and that was never really found to work all that well either.

So in 1980 there was developed an agreement between the judges and the government that a committee be struck known as the Ontario Provincial Courts Committee. The idea was the issue would be thrown to that committee. It was to be a committee of experts who would look at the problem. They would conduct an inquiry and they would make recommendations. It was never understood the recommendations would be binding on the government, but it was always understood the recommendations would be of such a nature that they would be highly persuasive and influential.

The more recent history following the development of that committee was that in 1981 it recommended equality of salary between the provincial court judges and the district court judges. Unfortunately, that recommendation fell

on deaf ears until 1985, when the Honourable Elinor Caplan seized the initiative and announced the government would not accept that recommendation. At that time, coincidentally, the minister also rejected the interim salary recommendation of the committee as it was then composed.

You may recall all too well the unhappy events that followed when Mr Greenspan, the nominee of the judges to the committee, resigned. Unfortunately, the resignation was not simple. It was in the midst of difficult and unhappy allegations that pitted the government and the judges against one another for several years.

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As a result, the judges withdrew from the Ontario Provincial Courts Committee process and it was not until 1987 that it was able to get off the ground again. In those intervening years, between 1985 and 1987, the relationship between the judges and the government was an unhappy one. It was eventually in the latter part of 1987 that cabinet and the provincial court judges were able to enter into a process agreement. That is the one that I have already referred to.

In 1988, then, the Ontario Provincial Courts Committee commenced its work, freshly constituted, with the understanding of both of the parties, the government and the judges, that it would proceed by way of an inquiry, that it would not be an arbitrating body and it would not be a mediating body, but it would be an inquisitorial body that would eventually make recommendations that would be delivered to the Chairman of the Management Board of Cabinet. It was agreed that those recommendations would be given the fullest consideration and very great weight by the government in the decision-making process.

The report was delivered to the minister in September 1988 and forthwith tabled before members of this committee. You were, of course, seized with Sunday shopping legislation for an inordinate amount of time and, as a result, your consideration of this report was delayed. It took somewhat longer than was expected by the parties to the process.

The reason for the referral to the justice committee was to hopefully avoid the type of history that had preceded this report. It was also largely influenced in part by the proceedings in Ottawa. This procedure mirrors to a very large extent the procedure that is followed for the determination of financial matters affecting federally appointed judges, those judges of the district court of Ontario and the Supreme Court of Ontario. That process in Ottawa appears, by all reports, to have worked relatively smoothly over the past decade. So part of the hoped-for result was that the acrimony—the tension that seemed to exist between the government and the judges—might be alleviated by following the process that seemed to work in Ottawa.

The process in Ottawa involved legislation which fixed the salaries of federally appointed judges. Whenever those salaries were to change, amendments to the Judges Act were required. That was not done on a frequent occasion. Rather, it was something that was looked at every three years. Any changes to the legislation on the triannual basis were preceded by a report of a federal commission that is very similar to the report of the Ontario Provincial Courts Committee.

The report of the federal commission would be tabled to the Minister of Justice. The Minister of Justice, in turn, would then cause the report to be

considered by the federal standing committee on justice and the Solicitor General of Canada.

The federal committee has proceeded to consider the federal report in a manner that I think is comparable to the way you seem to have resolved to consider the Henderson report. Essentially, in Ottawa it has proceeded on nonpolitical, nonpartisan lines with all of the parties recognizing that the judiciary forms the third arm into which the power of the state is divided.

The intention of all of the political parties seems to be that the public requires good judges and that it is in the better interests of the administration of justice that financial matters be handled in a nonpolitical and nonpartisan way. The federal committee in Ottawa, as I understand it, most recently considered the Guthrie report and did so over a period of two days.

The Chairman: The coffee, by the way, is not just for us. If you care for a coffee, as long as it lasts, help yourself.

Mr French: Thank you. My understanding is that in Ottawa the committee really only heard from one witness. That was John Robinette who in a sense has the same job that I have, except for perhaps a larger constituency. Mr Robinette acts for what is known as the Canadian Conference of Judges and that is a group of judges who make up the district, Supreme and Superior courts and the judges of the Supreme Court of Canada. Mr Robinette appeared before the standing committee on justice in Ottawa and made submissions to support and speak with respect to the Guthrie report and he was there to respond to any questions that the members of the committee in Ottawa may have had. My understanding is that the committee then essentially adopted the report in terms that Mr Sterling has already announced to you and then referred it back to Parliament for action with respect to the amendments to the federal Judges Act.

As I say, that procedure in Ottawa seems to have worked relatively well. The procedure in Ontario, I think it fair to say in light of the most recent announcement of the honourable Murray Elston, is perhaps still under review. We are only halfway through this process. The announcement of the government with respect to the salaries of provincial court judges has, to a very limited extent, pre-empted perhaps some of the process, but the judges accept that announcement with some relief as really an interim measure pending the final disposition by the government of the Henderson report. They look forward to the eventual full implementation of the recommendations in the Henderson report.

Having addressed the question of "What is the report doing on my desk?" I would like to address the third, very general, question, which is: "What should I do about it?" The answer to that question does not come so briefly or so easily. I think that the answer to that question requires you to really consider the recommendations that are contained within the Henderson report, and having considered them to accept or reject them, and to, if you are so inclined, as I submit you should, commend them to the cabinet for action on a very early occasion.

I could spend days going through the recommendations of the Ontario provincial courts committee and why it was—

The Chairman: As they say in the Court of Appeal, I assume that I

think all of us have read all of the report, hopefully, if not the majority parts of it, so if that helps you at all.

Mr French: I anticipated that guidance and so I resolved therefore that the assistance that I could give to you would be to identify some of the recommendations in particular that I intended to deal with and to identify parts of the report that I think are crucial to your understanding of the recommendations as a whole.

So in order to assist you in that task, I have had reproduced and distributed to you a copy of the recommendation section of the report, which commences at page 158. You should have a copy just of the recommendations. The idea of this is that you can mark this to your hearts' content, but hopefully it will serve to identify those matters that I intend to address in so far as the recommendations are concerned. I intend, as a prelude to a discussion of these recommendations, to refer to certain parts of the report as a whole. If you would look at the summary for a moment, may I tell you the recommendations that I intend to specifically address?

Commencing at page 159, I will eventually, by reference, incorporate recommendations 1 and 2 into my comments. I then intend to specifically deal with the third recommendation, then with recommendations 6 and 7, 14, 17, 41, 43, 44 and 45. I will deal with—

The Chairman: Sorry, 41, 43 and 45?

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Mr French: Yes, 41, 43, 44 and 45.

The Chairman: Okay, 44 as well.

Mr French: I jump over the others not because I do not attach importance to them but because, given the time that is available to you, I want to identify the ones I think are the cornerstone recommendations of the report, the ones I think are deserving of the greatest attention. Many of the others are in the nature of housekeeping recommendations. Others are of minor significance compared to the ones I have identified.

All of them are a complete cloth in terms of the report as a whole, but I want you to know generally the ones that I intend to deal with and they may be consistent with those you have yourselves already identified as deserving of particular comment.

Any understanding or appreciation of the recommendations of the committee require a consideration of the principles that precede those recommendations.

It is one thing to identify costs and dollar amounts and to add them all up and total them all up and say, "This looks like quite a bit of money." It is quite another thing to do that in a vacuum or to do that in the absence of any real consideration or understanding of the underlying principles that go into the recommendations that have been made.

I submit that it is important for you to have an understanding of the

principles that the Henderson committee decided were appropriate and necessary in order to consider the recommendations.

At page 40 of your report, the committee identified what it called the "Governing Principles." At the top of page 40, the members of the committee stated, "Before we set out our specific recommendations, we wish to identify and discuss the larger principles that have directed our thinking in this report." They identify three principles: "the imperative of an independent judiciary; the presumption that professionals will perform professionally if they are treated in a professional manner, and the importance of looking at the judges' compensation package as a whole."

I intend to deal with those principles briefly.

In so far as judicial independence is concerned, in my experience everybody knows about judicial independence. If you go and talk to the man or woman on the street, he or she will have heard of judicial independence, but it is a principle that I submit no one really understands or that most people understand very poorly. In that I include judges, lawyers and lay persons and perhaps even members of the assembly.

The report has an excellent discussion of judicial independence. In my years of considering literature and case law with respect to judge-related matters, I have often considered what has been written on the topic and I commend to you what appears in this report as being of particular importance. It appears at pages 40 through 57 of the report, and in my opinion it is a superior work in so far as the issue of judicial independence is concerned.

Time will not permit me to read the whole of it to you or to take you through the whole of it, but the notion and the concept of judicial independence is something that is extremely important and something that you must understand in so far as these recommendations are concerned, so I would like to refer you to particular passages of this section on judicial independence.

I commence at page 40 in terms of the general discussion. The committee, half way down page 40, states: "We begin by affirming the surpassing importance of an independent judiciary. Of all the propositions put before us, this was the least controversial. Judicial independence is an integral part of the heritage on which our legal system is built; it is a constitutive element of our political culture. It is in the courtroom that the rule of law is given its most concrete expression in the lives of individuals. It is crucial that those who preside in courts of law be able to do so without any appearance of interference from anyone."

The committee went on to quote some passages from the judgements of the Supreme Court of Canada in *Beauregard* and also in *Valente*. The first was a very general statement.

"The role of the courts as resolver of disputes, interpreter of the law and defender of the Constitution requires that they be completely separate in authority and function from all other participants in the justice system."

"These imperatives clearly apply with equal cogency to the provincial courts."

Then the committee posed the question, "But what, exactly, does judicial independence entail? By now there is little room for dispute about its

essential contours. According to another recent Supreme Court of Canada judgement,

"[Judicial independence] connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the executive branch of government, that rests on objective conditions or guarantees."

The committee stated in the second paragraph of page 42 that they would "discuss later the obligations these requirements impose on government"—that is, what are the obligations on government to ensure judicial independence—but they wanted "first to emphasize the impact they have on the lives of the judges themselves. No other group, in our view, is subject to a similar combination of constraints and responsibilities."

This is the point that I think the public often misunderstands. On page 43 the committee dealt with it under the heading, "The Costs to the Judge of Maintaining Independence."

"At the heart of the notion of judicial independence is the conviction that individual judges must have 'complete liberty...to hear and decide the cases that come before them....' Here, as elsewhere, such liberty has both a negative and an affirmative aspect. Negatively, it means that nothing may constrain or distract the judge from entertaining the full range of available options for disposition of a particular case: the judge's bearings are to come exclusively from the law itself. Affirmatively, it means that the decision, irreducibly, is the judge's alone. Each of these aspects of their office sets judges apart from people in other callings."

The committee goes on at the bottom of the page to adopt some passages from the work of Shimon Shetreet in his text *Judges on Trial*. Mr. Shetreet is the professor emeritus at the University of Jerusalem, and to those of you who are interested in matters concerning judges and judicial independence, he is perhaps the internationally renowned expert on the topic. If I may, I will read the passage from Mr. Shetreet.

"Independence of the judiciary has normally been thought of as freedom from interference by the executive or legislature in the exercise of the judicial function.... In modern times...[however]...with the steady growth of the corporate giants, it is of utmost importance that the independence of the judiciary from business or corporate interests should also be secured. In short, independence of the judiciary implies not only that a judge should be free from governmental and political pressure and political entanglements but also that he should be removed from financial or business entanglements likely to affect, or rather to seem to affect, him in the exercise of his judicial functions....

"A judge must be free from political or other pressures. This means that a judge must first be immune from such systems of distorting justice as direct pressure, bribery or approaches by the litigant, a friend or counsel; he must also be removed from any sophisticated entanglements, be they political, personal or financial, which might seem to influence him in the exercise of his judicial functions, let alone entanglements that might actually influence him."

"The consequence is that judges must, upon taking office, dissolve any business or financial connections they may have had before their appointment (and make no new ones while on the bench), terminate their political

affiliations and withdraw (or distance themselves) from personal relationships they may have developed with former professional colleagues. In isolated cases, judges may, and do, disqualify themselves from presiding at matters involving individuals or organizations with whom or with which they have or have had some connection. The clear understanding is that they will arrange their affairs in such a way as to maximize their capacity to hear without conflict the cases within their court's jurisdiction. For those who preside in the smaller centres, where few other judges may be nearby to substitute in cases of possible conflict, the need for circumspection is acute."

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The committee goes on to assess what these costs of independence are and the effects in terms of requiring an impact on the lives of the judges, isolating the judges from ordinary forms of social interaction with the community, limiting the judges from any business opportunities that are often available to others and also denying them the same flexibility of investment they had as members of the practising bar.

At page 45, the second paragraph reads:

"The role of the judge is also materially different from that of civil servants. Civil servants, acting within the scope of their employment, are shielded from the consequences of their acts and omissions by the doctrine of ministerial responsibility; legislators are often protected by conventions of confidentiality and solidarity in caucus and cabinet. The judge, however, stands alone and on public display. He or she must face individually any criticism directed against his or her decisions or conduct as a judge."

The footnote to that page points out that unlike judges on higher courts who sometimes sit in panels of three or more to hear appeals, provincial court judges always preside alone.

What are the obligations that judicial independence imposes on the government? In the last line of page 45, the committee indicates that there are three essential conditions that government must satisfy to achieve the minimum standard of judicial independence. One is security of tenure; jumping down about five lines, the second is financial security; jumping down beneath the indent, the third concerns the relationship between the Ontario government and the provincial court as an institution. In other words, it addresses the institutional independence that must exist between the government and the provincial court.

At page 49, after this discussion of judicial independence, the last four lines of the text lead the committee to, "none the less believe that our affirmation of independence has a number of specific consequences for the design and the content of a compensation regime for provincial court judges. These conclusions require elaboration."

Then in the ensuing pages, the committee goes on to deal in part with its elaboration of some of the requirements. Looking at page 51, halfway through the second paragraph, the committee points out:

"In this context, fidelity to judicial independence requires that the ways in which the government—or anyone—might be in a position to exercise leverage on the provincial court or its judges be kept to an absolute minimum."

Adopting again the Supreme Court of Canada judgement in *Beauregard*, the committee states:

"On the institutional plane, judicial independence means the preservation of the separateness and integrity of the judicial branch and a guarantee of its freedom from unwarranted intrusions by, or even intertwining with, the legislative and executive branches."

So the committee concludes, at the bottom of the text:

"Unless there are compelling reasons to do things otherwise, therefore, provincial court judges' compensation should be determined and provided separately from the usual theatres of government activity. Administrative convenience and routine attempts at economy are not, for us, sufficient reasons to depart from this precept."

At the beginning of the second paragraph on page 52, the committee then comes to its conclusions with respect to judicial independence and the consequences for design. They state:

"First, we endorse the joint recognition by the Ontario government and the judges' associations that provincial court judges' salaries should not be subject, even in principle, to the Legislature's annual fiscal appropriations process: they should instead be paid directly from the consolidated revenue fund."

In the third paragraph, they say:

"Second, we accept as sound the agreement of the government and the judges' associations that the salary for provincial court judges ought to be legislated, not established by regulation. Such an arrangement has the important advantage of removing the process of actual salary determination from the exclusive discretion of the provincial executive. In our opinion, that advantage outweighs the disadvantage that the process of adjusting those salaries becomes somewhat more time-consuming.

"The third consequence of our conception of judicial independence is that provincial court judges are not meaningfully comparable with anyone whose salary is paid by the Ontario government and who does not perform a judicial or quasi-judicial function. The fact that provincial civil servants' salaries, pensions or benefits are of a certain cost or value, are administered in particular ways or are subject to certain conditions, for instance, has nothing whatever to do with what compensation provincial court judges should receive and vice versa."

Then, in the second paragraph on page 53:

"Fourth, the provincial government should be involved only minimally with the administration of the judges' compensation."

In the last paragraph of the text on page 53:

"Finally, provincial court judges' insurance and benefit arrangements should, as a rule, be separate from those for others in the government payroll, in order that judges not be affected by default by changes in the government's benefits policy toward its public servants...."

Then, on page 54, the conclusion with respect to the consequences for design the committee states to be:

"We recognize that some of these standards, if implemented, may well

result in occasional diminutions in the monetary value of certain of the benefits the provincial court judges now receive. We accept this consequence as appropriate. The judges' associations have emphasized both the substance and the symbolism of judicial independence in their submissions. We have taken those submissions seriously. Judicial independence, however, generates other costs of its own. It is only reasonable that the judges themselves bear their fair share of those costs."

Those are the conclusions with respect to the general principles.

What does all of this mean, in so far as salary and pension is concerned? The Henderson report deals with that on page 54 and it starts with the premise, halfway down the page, that:

"...there is no necessary correlation between independence and superabundance. We disagree, however, with the government's contentions that judicial independence therefore has 'little bearing on the...quantum of the remuneration of provincial judges.' In our view, there are three specific ways in which judicial independence ought to influence the salaries of provincial court judges.

"First, it is widely accepted that governments may not reduce the salaries of sitting judges, individually or collectively, without infringing the principle of judicial independence."

At the bottom of page 55, they elaborate on that statement:

"In times of inflation, however, a judge's purchasing power can be diminished without reducing the actual number of salary dollars; if their salaries fail to increase as rapidly as prices do, judges can no longer afford the same range of goods and services as before."

Turning to the bottom of the text on page 56:

"It seems to us to follow, therefore, that our recommendations with respect to provincial court judges' salaries ought to recognize and preserve the purchasing power that those judges' salaries had in earlier years, unless there is clear and convincing evidence of extenuating circumstances. This, we believe, is especially so in view of the other two ways in which concern for judicial independence ought to affect the salary determination."

The second consequence of judicial independence for salary and pension determination is identified on page 57:

"Second, it is an emblem of a judge's independence that he or she be perceived by those within the larger community to be a person of means commensurate with his or her office. If a judge is perceived to be in straitened or reduced circumstances, he or she is more likely to appear to the public to be susceptible to financial pressure or influence, whether or not that really is the case."

Then, in the third paragraph:

"Finally, those who come to the bench from private practice incur a significant one-time income tax liability because the canons of independence require that they liquidate their interest in their law partnership upon taking office.

"These circumstances affect in two ways the principles of salary

determination: they require that the salary be high enough to suffice as the judge's sole source of income, even as the cost of living increases, and they alter significantly the kinds of comparisons one can make between the salaries of judges and those of other groups."

1630

The point I have come to is this: In considering its recommendations, the Ontario Provincial Courts Committee identified three general principles, and I have reviewed at length one of them, judicial independence. I have identified those passages of their report for you that I hope assist in understanding the interrelationship between judicial independence and judicial compensation.

The remaining two general principles, while they may be much more quickly digested, are no less important. The second larger principle the committee identified was that captioned "Treat Professionals as Professionals," and the committee's discussion of that larger principle commences at page 58 and goes through to page 63.

This principle has its origin in the notion of courtroom sitting hours. While I submit that it is not an issue that should distract you in your consideration of these recommendations, it is an issue that seems to work its way into the public forum on occasion, and I think it is useful, therefore, for you to have some understanding of what it is that the Henderson committee concluded with respect to this issue of courtroom sitting hours.

In a nutshell, the suggestion sometimes appears in the press that judges only sit three or four hours, and that perhaps would be a little comparable to compensating members of the assembly for the time they actually sit in the assembly as opposed to for the time they actually expend in the discharge of their duties as members.

At page 61, the committee aptly disposed of this issue in the following paragraph:

"In the first place, we think it would be a mistake for anyone to rely at present on courtroom sitting hour statistics as a meaningful measure of the nature or the amount of work provincial court judges do. There is simply too little trustworthy information on which to base an appraisal of those numbers' real significance. Many of the judges and lawyers who made submissions to us reminded us of the range of tasks outside the courtroom that are integral parts of the work of judging: reading and researching the law on a regular basis; dealing in chambers with preliminary and procedural matters; writing occasional reasons for judgement; travelling to and from remote communities. Because of the growing difficulty introduced into provincial court matters by the Charter of Rights, the Young Offenders Act and ever more complex provincial and federal regulatory legislation, judges, according to these informants, are having to spend increasing amounts of time on research and preparation outside the courtroom. None of these efforts registers affirmatively in records based on courtroom sitting hours, yet all of them are more or less indispensable. Finally, there are any number of circumstances beyond the control of particular judges that affect the length of time it takes to complete a day's docket of cases. Counsel may be ill, unprepared or unavailable; witnesses or accused may fail to appear; unforeseen complications may necessitate adjournments; cases may settle. Only some of these circumstances, perhaps, could be accounted for or avoided by more effective scheduling."

On page 62, the conclusion with respect to this issue, in the fourth paragraph, reads:

"First, the remuneration that judges receive has to be sufficiently generous, and be perceived by both the judges and the public to be sufficiently generous, to signify materially the public's awareness of the importance of the functions of the provincial judiciary and its respect for the qualifications and the expertise of the judges themselves. Meeting this requirement may occasion some small measure of financial discomfort for the provincial government. Such discomfort should be tolerated; it is, after all, a measure of the significance the province ascribes to the provincial courts' contribution to the justice system.

"Second, the judges' working year should be structured to recognize that quality work takes time. Judges should have sufficient opportunities for research and reflection. Because of the parallel principle of judicial independence, such opportunities ought ordinarily to be allocated by the senior provincial judiciary, not by officials in the provincial government."

The final overriding principle that the committee identified was what it described as the total compensation principle. This was an issue that was raised in the submissions of the Ontario government to the Ontario Provincial Courts Committee. In argument, the government had submitted that the committee ought to look at the total value of the compensation being paid to provincial court judges in making any particular recommendation with respect to any particular item. The conclusion of the committee, at the bottom of page 62, was as follows:

"Our final general principle is one that the Ontario government brought to our attention. In its final submission, the government encouraged us to 'consider the compensation package under negotiation or discussion as a whole,' as is the practice of interest arbitrators, in order to keep firmly in mind the aggregate cost of the improvements we might choose to recommend. This, to us, is common sense. Not only should our package of recommendations be credible financially, it should also make sense as a whole.

"We have sought in this report to design a compensation scheme that satisfies these requirements. The fact that we have done so, however, has implications for the manner in which our recommendations ought to be received and implemented. Because we have designed our set of recommendations to make sense as a whole, we believe that it ought to be implemented as a whole."

You appreciate, therefore, why it is that the judges view the minister's recent announcement with respect to salary increases as an interim announcement, pending implementation of the report of the Henderson committee as a whole.

The committee then embarked on its discussion of the specific recommendations that it was making, and a great deal of its time was spent in consideration of the salary issue.

On 5 May 1989, the Honourable Murray Elston announced that the Ontario government would adjust provincial court judges' salaries to \$105,000 a year, effective 1 April 1989. Mr Elston also said that in revising the salaries, the government would be making a retroactive pay increase of 4 per cent for 1987 and 4.6 per cent for 1988. Mr Elston went on to deal with the salaries of judges who had added administrative responsibilities. To that extent, Mr Elston has perhaps pre-empted, in a general sense, the recommendations of the committee with respect to salary.

But I do think it useful for you to understand as a committee the general principles that the Henderson committee considered in arriving at its recommendation with respect to salary, because it is important for you to appreciate that the Chairman of the Management Board of Cabinet has not, to date, indicated an intention on the part of the government to proceed with the Henderson salary recommendation.

1640

At pages 64 through 69, the committee dealt with the long-standing argument that the judges of the provincial court should be paid the same as judges of the district court. The committee concluded that it was not going to accede to that recommendation, but I think in terms of your understanding of what it is that the judges of the provincial court do, it is helpful to note the conclusion at the bottom of page 66 and the top of page 67. The committee stated:

"For purposes of this report, we are prepared to accept that the work assigned to provincial court judges is, on the whole, of equivalent responsibility, volume and complexity to that assigned to those on the district court. The volume of cases provincial court judges have to deal with is more than three times as great as the volume imposed on the district court; very serious cases and cases with complex facts or law seem prima facie no less likely to arise before the one bench than before the other. We recognize that the district court outranks the provincial court in the hierarchy and hears appeals from provincial court decisions in certain situations. The minimum qualifications for the two benches, however, are now identical. For these reasons, we consider the salaries of district court judges a useful comparison."

When they speak of the minimum qualifications, you will appreciate that in order to be appointed a judge of the provincial court, an individual must be a member of the bar for at least 10 years and that is the same requirement in order to be appointed a judge of the district court or a judge of the Supreme Court of Ontario.

With respect to the jurisdiction of the provincial courts, the committee had dealt with that early on in its report, commencing at page 6 and following. I am sure you will appreciate and be aware that the judges of the provincial court (criminal division) have jurisdiction to try virtually every criminal offence except murder, and indeed have exclusive jurisdiction to try murder while presiding in the youth court.

The Chairman: Is piracy not one of them too?

Mr French: Piracy, treason, assault upon Her Majesty and intimidation of Parliament are offences that are exclusively reserved to a judge of the Supreme Court of Ontario.

The Chairman: Exotic.

Mr French: Yes.

Similarly, the judges of the provincial court (family division) have a very broad jurisdiction to deal with a whole range of matters affecting families, although divorces and certain property matters are excluded from that court.

The judges of the provincial court (civil division), as you are aware, have jurisdiction to try all civil matters up to \$3,000.

Returning to the question of salary, at page 69 the Henderson committee looked at the salaries of provincial court judges in other jurisdictions. At the bottom of the text at page 69 the committee concluded:

"We have given little weight to the salaries provincial court judges receive in other Canadian jurisdictions. We lack the information and authority to ascertain whether the salaries those judges receive are appropriate. Even if we were to assume that the judges in the other jurisdictions are being properly paid, we could not simply apply those figures to judges in Ontario."

Then they go on to point out jurisdictional differences, geographical differences, ratio of judge to population differences and they conclude that no meaningful comparison can be made.

At page 70 the committee looked at comparing the salaries paid to deputy ministers, because of course this was a recommendation the Canadian Bar Association had made, both with respect to federally appointed judges and, on occasion, with respect to provincially appointed judges. In the second paragraph they conclude:

"Deputy ministers are primarily managers, who ensure the prompt, efficient realization of government policy. In paying them it is appropriate to provide wide salary ranges and payment based on performance. The function of a provincial court judge, however, is neither administrative nor managerial; thus, it is not truly comparable to that of a deputy minister. More important, judges comprise a distinct, third branch of government; their appointment and salary structure must reflect that reality and ensure their insulation from the legislative and executive branches."

The committee then goes on to conclude at the bottom of page 70:

"The factor we have ranked the highest is the one on which the judges' associations have placed the greatest emphasis: the continuing need to attract candidates of the highest quality to the provincial court and, once appointed, to stimulate and retain them for the duration of their careers. It is absolutely essential that the salary provincial court judges receive be high enough to signify, both to the sitting judges and to potential candidates, that the Ontario government respects and trusts the professionalism and dedication of its judiciary.

"To be attractive, the salary need not—and ought not to—be excessive. It must, however, be sufficiently generous to offset the financial and social restrictions provincial court judges must endure as a cost of ensuring their independence.

"We have examined the salary statistics in the studies submitted to us. We have paid particular attention to the reported earnings of partners who have 15 to 20 years' experience practising in small and medium-sized firms. Our recommendation establishes a salary structure that we believe will be attractive to better-than-average lawyers in Ontario who have 10 or more years' private practice experience and who are willing to exchange some income for the security of tenure and the honour of judicial appointment."

So, the committee recommends the salary be fixed at \$105,000 effective 1 April 1987.

Included with the material I handed out to you was a very brief summary comparison of judicial salaries. I offer this to you only in order that it puts in perspective the continuing comparison between judges of the provincial court and those of the district court.

At present, you will appreciate that a judge of the district court receives total compensation of \$131,800, and that includes the provincial subvention of \$3,000, so he is paid \$50,000 more than a judge in the provincial court. With the increase recommended by the Chairman of the Management Board of Cabinet (Mr Elston), there will still be a difference between the salary paid to a provincial court judge and that paid to a district court judge, and that difference will still be in excess of \$26,000.

The balance of the recommendation with respect to salary concerns the duties assigned to administrative judges. I do not intend to deal at any length with that. If you might turn very briefly to the handout I gave you, the photocopy of the summary of the recommendations, the point I have arrived at is that I have dealt with by reference recommendations 1 and 2 and with the third recommendation, concerning salary.

I want now to address the sixth recommendation; that is, the recommendation concerning what is known as automatic salary increases. The discussion with respect to automatic salary adjustments commences at page 74 and continues through page 77 of the report of the committee.

The committee considered the judgements of the Supreme Court of Canada in both Valente and Beaugregard and at page 76 concluded as follows, in the second paragraph:

"Preservation of the purchasing power of judges' salaries is, on the other hand, one of the guarantees of an independent judiciary. At present, the most representative measure of changes in purchasing power in Canada is the CPI. Despite its stated misgivings about the appropriateness of the CPI as a measure of inflation, the Ontario government, even now, thinks highly enough of that index to use it as the foundation for its own indexation of public service pensions."

The committee therefore recommended that "the Courts of Justice Act be amended to provide that provincial court judges' salaries be adjusted, effective April 1 of every year in direct proportion to the percentage of any annual increase in the national average of the consumer price index, published by Statistics Canada from the beginning to the end of the previous calendar year. We recommend further that when and if Statistics Canada regularly publishes consumer price index figures for Ontario, those figures be used instead of the figures for Canada."

In addition to the committee's reasoning in so far as purchasing power is concerned, I think it is important for you to understand the automatic annual salary adjustments within the context of the process; that is, the annual clash between the judges and the government with respect to financial matters has to end. The clash has taken on such significance that the provincial court judges and the government each seem distracted with these financial matters.

The process in Ottawa seems to successfully handle the issue so that it is considered only once in every three years, and in the off years, salaries are increased automatically by statute, thereby avoiding a seemingly annual catharsis with respect to what should be done about payment to the judges.

The next recommendation I want to direct your attention to is recommendation 7. It appears on page 160 of the summary and is discussed on pages 79 and following in the report of the Ontario Provincial Courts Committee. The essential features of the existing pension provision for the provincial court judges is that after 15 years of service and upon attaining the age of 65, a member of the provincial court may retire with a pension that is equal to 45 per cent of the final year of salary that provincial court judge is receiving.

You may appreciate that the pension that is paid to members appointed to the federal courts, the judges of the district court and the judges of the Supreme Court of Ontario is a pension that is equivalent to 66 2/3 per cent of the final year of salary. The difference was so great it became a common theme, in hearings before the Ontario Provincial Courts Committee, that judges of the district court in retirement earned more than sitting provincial court judges.

The committee analysed the existing provisions, and commencing at page 82, made their recommendations with respect to the pension plan. At the bottom of page 82, the committee stated:

"We propose no changes in the structure of the current pension plan; none of the submissions we received complained seriously about it. There are, however, some respects in which the retirement income scheme needs improvement.

"The plan no longer satisfies the target income replacement ratio—75 per cent of pre-retirement after-tax income, including old age security and the Canada pension plan—that our predecessor committee recommended in 1984 and that the Ontario government implicitly accepted as appropriate."

Then jumping down to the next paragraph:

"Further, it is increasingly common for the pension plans in both the public and private sectors to pay retiring long-term employees 65 per cent to 70 per cent of their best five year average earnings. That being so, a basic pension of 45 per cent of final salary can no longer be justified for provincial court judges."

The committee therefore concluded:

"Accordingly, we recommend that the basic percentage used to calculate provincial court judges' income continuity payments be increased, throughout the current plan and effective April 1, 1987, by 10 per cent of the salary earned at the time a judge retires by judges of the highest judicial rank he or she held while in office. That would mean, for example, that a judge who has met the basic service requirement and leaves office at age 65 would receive 55 per cent, instead of the current 45 per cent, of final salary."

The next recommendation I want to touch briefly on is recommendation 14, appearing on page 162 of the summary. It is discussed on pages 92 and 93 of the text. This was the amount of the survivor allowance. The Henderson committee recommended the amount of the survivor allowance be increased from 50 per cent to 60 per cent in each instance and that seemed to be consistent with trends in public service pension plans.

The next recommendation is recommendation 17, being the cost of the pension benefits, and in that, the Ontario Provincial Courts Committee recommended, on page 95 of the text and page 162 of the summary, that

effective 1 April 1987, provincial court judges be required to contribute a percentage of salary equal to half the cost of the combined survivor benefits, as determined annually by the Ontario Government Actuary.

I draw that to your attention, because of the concern that occurred in Ottawa with respect to the noncontributory nature of the pension plan available to some of the federally appointed judges.

Recommendation 41, appearing at page 167 of the text, concerned the incidental allowance paid to provincial court judges. This was an allowance that was paid to the judges in order that they might provide themselves with robes that they were required to wear for purposes of their office, in order that they might buy books and texts, and also in order that they might attend the various conferences and continuing-education seminars.

The evidence before the committee was that the cost of most of those items had doubled since this recommendation had been initially brought in. The committee therefore concluded that it would be appropriate to double the incidental allowance and that it be increased to \$2,000 annually, effective 1 April 1989.

Recommendations 43 and 44 concerned part-time service on the provincial court. In 1984, a revised retirement scheme was brought into being for the judges of the provincial court. The theory of the revised retirement scheme was that a judge could retire at age 65 and reduce his or her level of activity but be permitted to work on a part-time basis. The theory was that a judge could earn additional pension credits to the extent of one per cent per year, on the assumption that the judge was available to work 50 per cent of the time.

The experience of both the judges and the government was that was a wholly unworkable process. It just simply did not jibe with reality, so the Ontario Provincial Courts Committee has recommended that part-time concept introduced in 1984 be scrapped and the Courts of Justice Act be amended to prohibit the part-time practice of law by judges appointed to the provincial court.

Recommendation 44: The conclusion was that the committee recommended "that all provincial court judges who retire on or after July 1, 1984, be eligible, subject to ordinary approval requirements for overage appointments, for reappointment to the court on a part-time basis. All such reappointed judges who have qualified at retirement for receipt of income continuity payments should be entitled to receive such payments notwithstanding their reappointment."

The Chairman: Could I ask a question? I was just curious on that part-time. Did the committee conclude that you could in fact have part-time provincial court judges, as they do with part-time judges on the small claims court?

Mr French: No, the concept is different. In the provincial court (civil division) there is what is known as deputy judges and you have practitioners who sit on a part-time basis as judges in the small claims court. The notion here is in the nature of a retirement scheme for provincial court judges, and that is that the judge may retire and take the pension benefit that he or she is entitled to under normal circumstances, but then, depending on the needs of the court, the chief judge may draw on the pool of retired judges and say, "All right, Your Honour, I need a judge in North Bay,

I need a judge in Scarborough, I'm short a judge in Etobicoke; would you please go and sit there for a week?" That retired judge would do so and would be paid on a per diem basis.

The Chairman: So the issue is never reviewed by the committee as to whether or not you could have part-time provincial court judges, as you presently do in the civil division?

Mr French: Not in the sense of laypersons who are not judges.

The Chairman: No, lawyers.

Mr French: Yes, not in the sense that lawyers are. That was not a matter that was an issue before this committee, and in so far as these divisions are concerned, that was something that seems to have proceeded unchallenged since the McRuer report in 1968 that recommended the abolition of part-time judges, for example, or have-been judges who sat as part-time magistrates. The problem was they just did not have the expertise or the skill to deal with the criminal law matters that were required of them, or the family law matters.

1700

The Chairman: They were not lawyers, though. Go ahead. I am sorry. I did not mean to interrupt.

Mr French: This is in a different context. The gist here is that the judge may retire, and then at the discretion of the chief judge of the particular division may be called on to sit periodically and may be paid accordingly.

The final recommendation I want to deal with is recommendation 45. It appears at page 168 of the summary and at pages 123 through 125 of the Henderson report. It is a matter of cost. I do not profess to have all the experts Management Board of Cabinet has with respect to computing the cost of these matters, but nevertheless this was addressed by the Ontario Provincial Courts Committee.

They stated at the bottom of page 123: "The salary increases we propose will cost the government \$5,687,088 for the year beginning April 1, 1987 and somewhat more thereafter, depending on the rate at which the cost of living increases. We have attempted no estimation of the additional cost to the government of the pension plan enhancements we have recommended. Any such estimation would be anchored to the actuarial assumptions on which it was based. We were confronted in argument with two conflicting sets of such assumptions."

I should say that in the proceedings before the Ontario Provincial Courts Committee, it is important to remember that the government was represented by counsel, that counsel took positions on behalf of the government and that counsel advanced a very comprehensive theory with respect to the probable cost of some recommendations.

The provincial courts committee judged those various submissions and they concluded, at the top of page 124, that they had been confronted by two different assumptions: "...the rather cautious assumptions used by Ontario government actuaries, and the somewhat less cautious assumptions proposed by the actuary who gave evidence for the judges' associations. Each admitted that

the other's assumptions came within the bounds of generally accepted actuarial practice. Neither side claimed that its assumptions had any empirical foundation in the actual retirement behaviour or mortality rates of provincial court judges."

I do not know all of what the representatives of Management Board of Cabinet may say to you, but I do ask you to bear in mind this judgement of the Ontario Provincial Courts Committee with respect to the question of actuarial costs, that neither the judges nor the government had any empirical foundation for their assessment of costs. So really, it is a question of actuarial assumptions. Which assumption should I assume is more or less the more appropriate one?

The committee in the second paragraph stated:

"We offer the following considerations to put the issue of expense in perspective.

"First, we have emphasized throughout this report that the provincial court should be regarded as an independent branch of government and that its compensation system should be structured in a way that maximizes its judges' independence. One of the key structural changes we have proposed in recognition of judicial independence is that all the compensation provincial court judges receive from Ontario government revenues be paid from the consolidated revenue fund, not from the Attorney General's annual appropriations. The Ontario government has already agreed in principle that judges' salaries should be a charge on that fund. One important effect of any such recognition is that the cost of remunerating provincial court judges will be spread across the whole of the Ontario government, not sustained uniquely by the Ministry of the Attorney General. This is as it should be for an independent branch of government. That means, however, that the proper context in which to evaluate the increase in costs that will result from adopting our recommendations is not that of the budget of the Attorney General's ministry but that of the total expenditures for the Ontario government for the year. Seen against that background, the increase in cost, whatever its full amount, will be small."

Then the committee points out, "It is well to remember that...judges' remuneration has not been adjusted significantly" since about 1980. Then they refer to some studies with respect to what the people of Canada as a whole think of justice costs.

By the way, I misdirected you in dealing with recommendation 45. I dealt with the question of cost. Recommendation 45 of course deals with the consolidation of regulations that pertain to the compensation of provincial court judges. The committee recommended that "updated copies of that master regulation be provided to every newly appointed provincial court judge from time to time." That is something the federal government does through the federal commission on judicial affairs.

In Ontario, there is an office known as the office of judicial support services. It is managed by Keith Norris who coincidentally is here today. I have told Mr Norris and representatives of the government, and I also tell you, that every dime spent on the office of judicial support services is, as far as I am concerned, an extremely wise investment because it enhances communication between the provincial court judges and the government, which is something that at times has been lacking to a very serious extent.

I have taken a great deal of your time in reviewing the recommendations and the background to them, but I hope you will agree with me that it was necessary in order to put in perspective some of the particular recommendations, and also in order to assist you with respect to some of the reasoning behind some of the particular recommendations.

It is very simple to look at these things in terms of simple cost, but it is much more difficult to look at these things and understand why it is those costs must be borne.

I have appended a series of editorials that span the period 1983 through 1989. The only reason for my doing so is to indicate to you that the notion of increases and enhancement to judicial salaries is something that seems on occasion to have generally enjoyed editorial support throughout the province. It is something that seems to be generally accepted by the public.

I notice both Mr Levy and Mr Rubel are here, Mr Levy on behalf of the Criminal Lawyers Association and Mr Rubel on behalf of The Canadian Bar Association. I have spoken of the interest of the public and the view of the public, but I wonder whether perhaps we might hear from them with respect to their perspective from those particular groups.

The Chairman: If you have concluded, Mr French, there will be questions. I already have Mr Sterling on the list.

As I indicated at the outset, we have a vote scheduled for 5:45 pm in the House. I do not want to bring Mr Bliss or Mr Levy back. I am sure they could be doing things that are much more remunerative than being here. Perhaps, with the committee's agreement, we could have Mr Levy and Mr Bliss come up. Mr Bliss has had the benefit of hearing all your submissions. Mr Levy was not here for them. Perhaps that will create a degree of brevity in terms of what comments they might have, such as "me too" or whatever. Then we can have questions from the members of the committee and not have to have them come back tomorrow.

Mr Rubel is here as well. Perhaps we could have him come forward. Mr Levy, would you like to come up and join these august members of the civil bar?

Mr French: I will retire until you—

The Chairman: No, I think perhaps you might sit there as well. As long as we have people speaking into the microphones, we can preserve your pearls of wisdom for posterity by reason of Hansard. Maybe I could call on Mr Bliss first, since he was here for the entirety of the presentation, then Mr Rubel and then Mr Levy.

HARVEY BLISS

Mr Bliss: I was president of the the Canadian Bar Association—Ontario at the time the brief was prepared and submitted and I attended on behalf of the bar association to submit the brief to the committee and to testify before the committee.

As you know, the bar association represents both crown attorneys and defence attorneys, both plaintiffs and defendants, and we hope we speak on behalf of the public in an unbiased fashion. We submitted a draft report to a

meeting of our council and various views were expressed as to dollar amounts of the central issue, that is, salary-----

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The Chairman: Mr Levy may have to leave.

Mr Hampton: You are so bad.

The Chairman: Carry on, Mr Bliss; I am sorry.

Mr Levy: Very cute; not funny, but cute.

The Chairman: Go ahead.

Mr Bliss: For every member of our council who expressed a view as to dollar amounts, it was over \$100,000. There was no one in that group who thought the figure, if there was to be a figure, should be less than \$100,000. But on balance, the prevailing view was that there should be parity with the district court judges, which would be substantially in excess of the \$105,000 recommended by the committee.

That concept was rejected by the committee, but as you will see in the committee's summary, there is a great deal of support for it. There are things to be said against it, but even in rejecting it I think you must bear it in mind; that is, that there is a very substantial body of opinion that the base figure for salaries should be substantially in excess of \$105,000, and \$105,000 is minimal. I agree the possibility of comparables does not apply. You cannot compare other offices in the civil service or elsewhere.

Similarly, as a minimum it has to be retroactive back to 1987. In my submission, it is not acceptable that the figures should be, in effect, jiggled by putting them into place even now. If there is to be a review every three years, in effect the salary increases only take place every five years. That is just unacceptable.

Finally, may I urge upon you to find a better way. The committee considered it. We go through this struggle at the federal level every three years. We have had continuing problems in this province. My submission to you is that there should be a continuing mechanism so that we do not have to keep doing this.

Thank you. Mr Rubel, who is chairman of our provincial judicial committee, will have his say.

HOWARD RUBEL

Mr Rubel: Thank you for hearing me, members of the committee. I would like to thank Mr French for inviting me, as well. I prefer to relate my comments more directly to the implementation of the Henderson committee's report than to the substance of it as Mr French has gone through with you.

It is my understanding that it was in July 1987 that the original agreement from which the Henderson committee was formed was signed. It was not until 18 February 1988 that the order in council establishing the committee formally was approved. The report was drafted as of 27 September 1988. Here we are in mid-May 1989 with the report finally being tabled before your committee.

The point of that reciting of dates is to emphasize the fact that it has taken a long time for the report to come before this particular committee. The terms of reference of the original Henderson committee were to establish, among other items, fair compensation for provincial court judges as of 1 April 1987. These recommendations, as evidenced in the letter of intention, are to be given very great weight by the government in the decision-making process. The Henderson committee's recommendation and the report in front of you is, of course, for \$105,000 basic compensation as of 1 April 1987. It is now over two years behind and that matter has not yet been implemented.

The Henderson committee also recommended an adjustment formula based not on the rate of inflation, but on the consumer price index. It would recommend that salaries be adjusted accordingly on 1 April of every year. Again, I would stress that two 1 Aprils have now passed and that 1987 figure is exactly the one we have now had implemented, according to Mr Elston's statement of 5 May 1989.

Mr Bliss commented on the idea of parity and the Henderson committee rejected the idea of parity between provincial court judges and district court judges. I believe a comparison of the two in terms of compensation would not be fruitful, except to note that from April 1987, the date the Henderson committee's recommended salary was or is to take effect depending on your interpretation, until today, the salary of district court judges has again jumped some \$28,000, a significant amount over the last two years.

I think we should take this as a very strong sign not to overlook the financial changes between 1987 and today. In addition to the normal ones that we are all aware of, there is certainly a loss of consumer buying power for provincial court judges. In addition, though, there has been a substantial reduction in the federal old age pension, on which judges rely significantly. The pension, which they are now going to be paying more into on a yearly basis, coupled with the old age pension they are entitled to, is actually going to create less of a pension than they were entitled to a few years ago.

Having juggled around some figures myself, I suggest that for provincial court judges to have the same purchasing power they had in April 1981, they would require a base salary of \$107,000 today. That is just to stay on par with what they had in 1981.

I would also like to commend the Henderson committee for having done such a comprehensive report. Dealing with one of the more sensitive and difficult situations, I think the judiciary, coming from my perspective as someone who appears before it all the time, has always been a difficult animal to handle. No one quite knows how to handle them because of the idea of independence that surrounds their offices.

As the chairman of the provincial judiciary committee of the bar association, we suggest that your committee implement the recommendations of the Henderson report but in the context in which we believe they were made, to relate to the 1987 framework which was in the letter of intention behind that committee's report.

The report emphasizes a comparable view of the work done in both the provincial and the district courts in Ontario and further points out that we must continue to attract the most appropriate candidates to the provincial court bench, the highest quality candidates, and to keep the ones we have there now. To do so, not only is an adequate compensation scheme required but

the precise process by which we get that compensation scheme, the way it is fixed, is going to be of utmost importance.

Provincial court judges, members of the public and other interested individuals are not so much going to be looking only at the Henderson report itself but at what your committee is in fact going to be doing with it. It is what you are going to do with the Henderson report that will be a signal, a reflection of the government's good faith in dealing with provincial court judges.

As all interested parties in this room and the speakers before you have indicated, independence of the judiciary is one of the main concerns when dealing with the provincial bench. I submit that it is your implementation of the committee's report that is going to underscore that we do have an independent provincial judiciary.

Paragraph 7 of the letter of intention, dated 21 July 1987, states, "Following receipt of a report of the committee and its tabling and consideration by the standing committee on administration of justice...." This is at page 142 of the report, the letter between Ian Scott and Paul French. Following the tabling of that report, the government would table legislation establishing the salaries of provincial court judges as of 1 April 1987.

What has been done is that the report has now just come before your committee, but before it had even been tabled before your committee, as indicated by the 5 May press release of the Chairman of the Management Board of Cabinet, the Ontario government had already set a new salary level, effective as of 1989, pre-empting this committee's tabling of the report. I would submit and urge that you not consider yourselves bound by the government's action of 5 May of this year nor be pre-empted by the actions of the Management Board of Cabinet so far.

In the alternative, I submit that even with the government's action of May of this year, the issues of salary indexation, pensions and other benefits are still open to you and should be used in such a fashion that whatever salary is set for the provincial court judges, they will, together, reflect the true spirit of the Henderson report's recommendations, which are to offer the judges of the provincial court in Ontario a scheme of compensation that is not only objectively fair in terms of compensation for work done, but capable of attracting the best candidates and retaining those already on the bench.

I would like to conclude by pointing out that paragraph 2 of the same letter I have just referred to calls for the appointment of the next members of the Ontario Provincial Courts Committee within six months of 1 January 1990, some seven months hence. I hope that now we have the Henderson report and we have it tabled before your committee, we do not let down the process and progress we have already made and that we continue, with recommendations, reports and adjustments of how we treat our provincial bench, towards our common goal.

1720

EARL LEVY

Mr. Levy: The Criminal Lawyers Association of Ontario supports the provincial court judges in their request. I, however, would like to concentrate on the area of working conditions, because it is an area which we, as defence lawyers, can see with our own eyes. If I emphasize the Toronto

courts, I use them only as a representative of the busier courts of the province.

I have been practising criminal law in Toronto for some 26 years. When I first started, the only real provincial court in the Metropolitan Toronto area was old city hall; indeed, there was no courthouse at University Avenue and Armoury Street. My first jury trial was held on the second floor of old city hall, and at that time you could shoot a cannon in the hallways and not hit anyone.

Things have really changed over the years. Now we have five provincial courts in the Metropolitan Toronto area, and if an interested observer wanted to find a seat to sit on in the hallways, he would have a lot of trouble and certainly could not find a place, nor can even a lawyer, to hang his coat or put his galoshes away.

There are more people wandering our provincial court hallways who are not wrapped too tightly than ever before, and this is the gauntlet that provincial court judges have to walk in many of our courts to get to their courtrooms, wearing their gowns; it is like waving a red flag at a bull to some people.

In my respectful submission, one day somebody is going to make a very serious attempt on the life of a provincial court judge. Something really has to be done regarding the security of our judges, particularly in a number of the provincial courts.

The lack of judges in the province has reached crisis proportions. For the last three years, Chief Justice Howland has opened the courts officially every year and has requested more provincial court judges, and the government has not listened to his request. Indeed, I believe there may be fewer provincial court judges now than in 1983.

The physical and mental strain on the judges we have is clear to anyone who goes to provincial court on a regular basis, that is, the busier provincial court judges. Some of our provincial court judges are like dentists who run from chair to chair trying to keep things going. There are a few who do not care any more because morale is so low and they feel the government does not care about them.

More and more cases are being stayed because of unreasonable delay in coming to trial, because of our heavy backlog. In my view, the trial reduction delay programs instituted by the Attorney General are cosmetic only; they will not solve the problem. One wonders if a murder charge has to be stayed before something is done with respect to the hiring of more judges.

A real problem has been jail overcrowding. You might wonder how jail overcrowding impacts on our backlog problem. Very simply put, it is this: People in custody are taking longer to come to trial; they are staying in the holding jails much longer; they are going back to and from court much longer. What is happening with the jail overcrowding problem is that, first, many defence counsel are going to jail to interview their clients and finding they have been shipped out, have been shipped out as far as Sault Ste Marie, and that is a gross interference with the solicitor-client relationship.

I have had several Don Jail guards in my office who were extremely upset about the problems. For example, the Don Jail has cells that were originally set for 250 people; it now has some 600 people. Originally, there were one

person per cell. Now every cell has two and some have three, with the third person sleeping on the floor with cockroaches and mice running across his body. There was an article in the Toronto Star just a couple of days ago by one inmate who supported that. There are health problems being created.

That, in part, in my respectful submission, has to do with the problem of the backlog we have. There is a domino effect, because as our jails get filled other, jails are getting more filled as well and they are having the same problem elsewhere.

No other trial court sees its judges going through the day-to-day grind that provincial court judges do. They normally do not have the luxury of dealing with one case only over a period of days or weeks. Accused are going through the system as if on assembly line. Judges do not have the luxury of judgement weeks, which the district court and Supreme Court judges have. Provincial court judges are interested in moving the list along and cannot devote the time they would like to the cases.

There are so many new, inexperienced crown attorneys now that, try as they do, they are not experienced enough to move the cases along themselves and are creating an added strain on the provincial court judges. I think provincial court judges are more subject to burnout than district court and Supreme Court judges. Although it has not been recommended, it would seem to me that perhaps some form of sabbatical for provincial court judges every so often would be a very good idea.

The Chairman: I think a sabbatical was recommended in Henderson.

Mr Levy: All right. I missed it. I notice that the Attorney General has come down with a plan for court reform. Stage 2 of his plan—and I must confess that I would be very surprised if it were implemented in my day—calls for one unified court, where the Supreme Court, district court and provincial courts are one court and all the judges hear the same cases. It seems to me that is a signal by the Attorney General that he feels the present provincial court judges should be treated very similarly to the Supreme Court and district court judges. If that is his thinking, I wholeheartedly support it.

Those are my submissions.

The Chairman: Thank you, Mr Levy. I have Mr Sterling, Mr Kanter, Mr Hampton and Mr Kormos. I hope members keep in mind that these gentlemen are here today, and rather than bring them back tomorrow, perhaps you can be succinct in your questions.

Mr Sterling: I am going to pass, because the question I had was answered.

Mr Kanter: I would like to thank all the deputants for a lot of useful information. I have questions in two areas. The first one is salary adjustment, which is something that everyone has touched upon, the committee and others. Mr French referred to a federal system where it was reconsidered once every three years, or something like that. I am wondering if you could provide a little more information about how the federal system works with respect to salary adjustment.

Mr French: That is a very important issue. The salaries of judges appointed by the federal government are fixed by statute, known as the Judges Act, and the salaries only change when Parliament decides that that act will be amended.

Obviously, Parliament is not going to amend that statute every year. There is a problem in intervening years: What do you do to give them a bit more money? So the statute has a fixed cost of living provision contained within it. The statute says that even if Parliament never looks at the salaries of judges, their salaries will automatically increase by statute. They are going to increase by the cost of living or seven per cent, whichever is the lesser.

So even though Parliament on 1 April 1989 did not look at the salaries paid to the judges in the district court of Ontario or the Supreme Court of Ontario, those salaries automatically increased by—I am afraid I do not know the exact per cent. At the end of April, the judges received a retroactive cheque increasing what they were paid in April 1989.

The act provides that there will be a triennial commission that will look at the salaries and benefits paid to judges who are appointed by the federal government. Once in every three years this commission is created, and its mandate is to go out throughout Canada to research and look into what recommendations it should bring back to Parliament with respect to the salaries of federally appointed judges. It can conduct hearings across Canada and can receive submissions from across Canada, and then it prepares a report.

1730

The last report that was completed was known in the vernacular by its chairman, Mr Guthrie. It became known as the Guthrie report and it was given to the Minister of Justice, then Mr Hnatyshyn, who in turn referred it in Parliament to the standing committee on justice and the Solicitor General.

You may recall from our earlier discussion today that the standing committee in Ottawa considered the report. Mr Robinette attended on behalf of the federal conference of judges. He made some submissions to the members of the all-party committee, and the all-party committee in turn referred the report back to Parliament and the Minister of Justice.

There were some minor qualifications in referring the report back but I think it fair enough to say that it was a report, if my recollection serves me correctly, of about 120 pages and the comments of the members were very narrowly and specifically focused. I think it is fair enough to say that they essentially gave the report their approval and sent it back to the minister and said, "This is fine with us."

The Minister of Justice in turn then introduced legislation back before Parliament to amend the Judges Act. That is the procedure.

Mr Kanter: I think I understand that the legislation contains a provision that says that salaries will increase by the cost of living or seven per cent. What I do not understand is the three-year limitation. In other words, what happens if the commission for some reason is not struck, does not meet or does not report? Is it an absolutely automatic indexation or is it a very limited form of three-year indexation?

The Chairman: It is an automatic indexation.

Mr Kanter: That is what I do not understand.

Mr French: And it rolls on. In other words, if for some reason the members of the committee were to die in a catastrophe and were unable to

report, the increase would roll on and it would be made on 1 April of each year in any event.

Mr Kanter: So it is an automatic indexation which may be superseded by the report of a committee which is supposed to meet every three years?

Mr French: That is correct.

Mr Kanter: Could I just touch on one other area briefly?

Mr French: May I say as well that the triennial meeting is also fixed by statute. It would take some form of human catastrophe for there not to be a report.

Mr Kanter: Can I ask one further question?

The Chairman: I want to be fair to the members. If they are in agreement, okay.

Mr Kanter: It really concerns the quite separate area of pensions. I heard your comments and also Mr Rubel's comments about the cost of these pensions. I thought Mr Rubel was indicating that there was some sort of additional cost of the pensions to judges. As I understand it, the payments to judges differ from those of civil servants, people in the private sector, members of the Legislature or whatever, in that judges make no contribution to these pensions at all.

The Chairman: Oh, yes, five per cent, I think.

Mr Kanter: Perhaps Mr French could comment. My understanding is that they do not contribute at all towards their pensions. They may in fact contribute towards survivor benefits or other sorts of benefits, but it might lead some people astray to suggest that judges bear any of the cost of the pensions. Leading from that, if my premise is correct, I am wondering—

The Chairman: Let's find out if the premise is correct.

Mr French: Generally speaking, I agree with you, Mr Kanter. I think you have to divide the retirement benefit into two components, the component that benefits the judge personally and the component that benefits the judge's survivors.

In 1984, when this system was redefined, the government said, "We will have a fixed contribution from the judges"—it works out to 5.47 per cent or 5.75 per cent—"and we are going to arbitrarily"—and I use that word with some qualification—"allocate that to the survivor's component of the retirement scheme." In the result, it is done that way.

I could doublecheck it for you, but it is my understanding that the judge in his or her own wisdom may elect to have that contribution apply to another portion of the retirement benefit component, but for tax reasons all judges allocate it towards the survivor's component.

Mr Kanter: In principle, I think everyone is agreed that we should look at a total compensation package and I guess I am wondering how much value is placed on the fact that judges were receiving a fairly substantial pension that they did not contribute to, unlike most other groups who receive pensions. That is really my question.

Mr French: I think the question is the per cent contribution. If you want to make that comparison with other groups, bearing in mind that Henderson said that is probably an inappropriate comparison, on a per cent basis the contribution of the judges is comparable to 0.93 per cent of the contribution made by other groups.

But do not forget that what is said here with respect to judicial pensions is—forget all about the normal rules. You are attempting to attract a person into judicial service who on average is 45 years of age, so he or she has already missed 20 years of contributions in the normal civil service scheme. Forget about it. You cannot meaningfully compare those two.

Therefore, in attempting to design judicial pension plans, whether they be on the national basis for the federally appointed judges or on the provincial basis, or if you are attempting to design pension plans for members of the Legislative Assembly, or executives in certain industry or municipal employees, you have to apply new thinking, new concepts. For members of the assembly you have different per cent contributions that are credited per year of service, then after so many years of being re-elected, there are different provisions that apply; similarly with municipal employees. So it is with judges.

It is found that the per cent per year of service formula just does not apply. They therefore move to the per cent of salary. You cannot fund that on an actuarial basis from the judge's contributions; it is impossible, and that is recognized. Therefore, you say: "All right. We think it appropriate that the judges make some contribution. We're going to take that contribution from them and we're going to put it there." It is a contribution, but it cannot possibly be said to fund the pension on an actuarial basis.

The Chairman: I have to jump in. We are going to be hearing from Management Board of Cabinet, so you can pursue that further.

Mr Hampton: I want to thank you all for coming here. I want to address my remarks to you, Mr Levy. The terms of reference for the Ontario Provincial Courts Committee set out three rather narrow things, yet on page 58 the committee itself goes into the treatment of professionals as professionals. Although in a very indirect way, it does get into working conditions and how you measure working conditions and productivity, those kinds of things.

My conversations with provincial court judges has led me to believe that the problem many of the judges have is not just with pay, it is with everything. It is with, as you say, security; it is with case loads; it is with whether they are being listened to or not.

I am really asking for your opinion on this. My limited background in bargaining as a teacher and in the labour movement was that sometimes management would put a fairly attractive cash offer on the table in order to get you to forget everything else: "We don't want to talk about working conditions. We don't want to talk about health and safety issues."

I think you can broadly refer to security of the court system as a health and safety issue. Is the offer of cash, a higher salary or a better pension, going to solve the problem that is out there? Or is it much bigger than just salary, benefits and allowances?

Mr. Levy: My sense from talking to a number of the judges in

southern Ontario is that they feel the government does not care about them. They feel the government does not care about them for a number of reasons. One, obviously, is pay. They have been asking for an increase in pay for quite a long time.

But what has been creeping in—perhaps I use the word "creeping" incorrectly, but I use it because it has only been coming to the fore in the last couple of years—is the problem of security and the backlog problem. I see physical and mental strain getting to a number of the provincial court judges in southern Ontario. Pay has been one of the factors, but I think security is becoming increasingly more important in some of the courts. Obviously, security is not a big problem in the courts where judges can move behind the courts and come into the courts from the rear, as opposed the old city hall where they have to run the gauntlet. That is one of the problems.

1740

The backlog problem, in my view, is certainly one of the most serious. I believe that is affecting six areas in Ontario, at least where they have the trial reduction delay programs working right now to see if they can solve it. In my view, they are not going to solve them. The Attorney General has referred to Ottawa, where they had the first trial reduction delay program. He thought that within the period of a year they had cut two months off the lengthy wait list when they instituted that program. I have talked to other people from Ottawa and other judges, and they say it is really not working any more. They are falling behind again. I just think it is a very small step and it is not going to work.

The Chairman: Mr Hampton, I do not want to interrupt. That certainly was the more expanded version of the report, but I want to let Mr Kormos and Mr Offer get their questions in before we close.

Mr Kormos: Prompted by Mr Levy's comments—he mentioned the old city hall. He did not mention the courts that take place in basements of Royal Canadian Legion halls, taverns and public halls; the doors clanging of the only washroom servicing everybody, along with the toilet flushing and resonating throughout the courtroom.

Along the line of his comments, the Chief Justice criticizes backlog, unavailability of judges at the opening of the courts. It seems virtually every provincial judge in the province, if not all of them, have at one point or another commented in their own courtrooms on the backlogs—Brampton recently had 22 hours of work docketed for one day—yet the Attorney General either ignores the comments or publicly rebuffs the source of the comments. In the instance of the Chief Justice, he got into some sort of bizarre exchange.

Mr Levy, I wonder if, in view of what he said, you can comment on how that impacts on the perception of the administration of justice, when the Attorney General is appearing to dispute not just the Chief Justice, but also, it seems, every other provincial judge in the province.

Mr Levy: I have been at a few of the first meetings of the trial reduction delay programs on behalf of the Criminal Lawyers Association. It was always everybody's view, at least we always understood, that there was not enough money for more judges. That is what the Attorney General has said on many occasions when asked publicly to speak about it; but when he spoke at the trial reduction delay programs, he said if you show everybody is working together trying to solve the problem, then the money will be available to do something.

I am not political in any fashion. I want to make that clear. I do not have allegiance to any party whatsoever. I think the signal went out that all this talk about the money not being available may not have been as accurate as we were led to believe, because in effect the Attorney General was saying: "There is money. Just show us you are all working together, everybody—defense, bar, crown and judges—to try to cut the delay down and the money is there." I think working together may cut the list down a month or two, but it takes well over a year now, in a lot of jurisdictions, to get your first trial date. The real problem is the lack of judges.

The Chairman: Mr Kormos, I am going to move to Mr Offer, so we can save these gentlemen having to come back.

Mr Offer: Thank you very much, gentlemen, for your presentation. I found it very helpful. Many of the questions I was going to ask were posed by Mr Kanter. However, there is one thing I would like to get more of an expansion on. I take it from Mr French you have been indicating the process at the federal level, in terms of the justice committee there reviewing a particular report on a three-year basis, seems to have taken some of the difficulty out of this whole area we are in. I am just wondering. I hear from Mr Bliss—and I may have read it incorrectly or heard it wrong—that maybe there is some difficulty at the federal level also in terms of the process.

I would just like to get an understanding. From your large experience in this area, does this federal type of process work? Is it something we should consider, and what type and what areas might we wish to look to for further expansion on this type of endeavour?

Mr French: Perhaps I may reply first. The differences in the difficulties being experienced on the federal plane and on the provincial plane are matters of degree.

The federal process is proving to be imperfect because the federal government is failing to implement the whole of the recommendations that are being made to it by the commissions that are entrusted with the responsibility of studying the problem. For example, the federal commission had made certain recommendations with respect to the salary to be paid to the federally appointed judges, and inherent in those recommendations were certain retroactive payments. The federal government adopted much of what was contained within the report but did not adopt the whole of the retroactive component that was in the recommendations, so the federally appointed judges say: "Well, this isn't fair. This was the process we agreed upon; this is the type of inquiry that was made; you're not implementing the whole of the recommendations." I think the federally appointed judges feel a little frustrated in that the federal government is not acting on the whole of the recommendations. I put that simplistically, but nevertheless I think that is the essential problem.

You must contrast that with the situation in Ontario, where many provincial court judges are distracted on a daily basis with financial matters and with process issues that affect them because there has never been a workable process in Ontario that allows for the orderly and amicable resolution of financial differences or financial matters that affect the provincial court judges. As a result, there is an annual catharsis that takes place.

The judges of the provincial court of Ontario met in 1987, together, the three divisions for the first time. It was a meeting without precedent and

they forwarded this resolution to the Premier (Mr Peterson) saying, "We can't take this any more; you intervene."

That was happening again this year and on 25 May and 26 May all of the judges in the provincial court of Ontario are meeting in Ottawa. One of the significant reasons for that meeting is to look again at the process and say, "Here we are two years later; what's happened in the intervening two years?"

The Management Board of Cabinet, in its wisdom, has seen fit to make some enhancements to the salary paid to the provincial court judges, but the jury is still out on what is going to happen to this report. Is the Management Board going to come before the members of this justice committee and blow it out of the water because it has extravagant costs appended to it? Are the members of this committee going to tear it up into shreds and say—

The Chairman: We will have to wait until tomorrow to find that out. If you want to follow the continuing saga, you can come and see.

Mr French: But I point out to Mr Offer that we are in midstream in a process in Ontario that has never yet had any satisfactory consummation, so there is that qualitative distance between the two. On balance, from where the provincial court judges sit, the federal process has been working better, albeit imperfectly.

Mr Bliss: Could I just very quickly add that, on paper, the federal scheme looks better. It suffers from the same problem of implementation through what I call the fiddle that it is supposed to operate every three years but by the time government accepts it it is two years later, without being retroactive, so it becomes every five years.

I do commend a review of the federal Judges Act to you, because there are some good thoughts in there, including the office of a commissioner for judicial affairs which stands between the judges and government. I think that would enhance the independence of the judiciary in this province. Problems like expenses of judges are better negotiated by an independent person. There are several thoughts there. A comparison of two schemes would be useful.

The Chairman: We were anticipating a bell at 5:45. I have just asked the clerk to check to see if there is, in fact, going to be a vote in the House. Sometimes we are surprised by what happens around here. Maybe I should ask the gentleman over here whether there is going to be a vote. I will not do that.

I want to thank you very much, in anticipation that there will be a bell, for coming before us and sharing your valuable time.

I just want to inquire; are the items that you asked us to mark off at the outset, Mr. French, the most important items, and are we to ignore or not concentrate on the ones that were not ticked off?

Mr French: There was obviously a limited amount of time, so I tried to concentrate on those that I thought might require more comment. Many, at least half, of the others that I did not specifically address may be grouped under the heading "housekeeping matters."

The Chairman: But despite very much more in the Henderson report, these are the items that you present, as counsel for the judiciary, as the salient items.

Mr French: Well, no. I would not want you to misunderstand me. On behalf of the of provincial court judges of Ontario, I would say they look forward to the implementation of the whole of this report by the government. There are 49 recommendations that are contained within that report.

What I attempted to do on behalf of the judges for the benefit of the committee was to say: "Look, some of those recommendations do not require an in-depth consideration by you. They are amendments to legislation. Change this word for that word. Clarify that so we all know what it means." I do not think they require too much agony on your part with respect to whether to accept or reject the report.

What I attempted to address were those recommendations that I think are the guts of the report. These are the ones that involve cost, that have the most substantial impact on the judges and that all of the larger considerations—judicial independence, "treat professionals..." and the cost discussion—funnel into, but that is not to say the others should be ignored. The others are part and parcel of it.

The Chairman: I just wanted to be clear on that.

We would like to thank you on behalf of all the members of the committee. If you wish to come back tomorrow to hear from the Management Board of Cabinet people who will come and testify before us, you are certainly welcome.

In closing, on Mr Levy's comments about the adequacy of facilities, I just caught one point there. You said that has arisen in the last two years. I do not know about Toronto, but certainly out in my jurisdiction that has been going on probably for 10 years.

We stand adjourned until after routine proceedings tomorrow.

The committee adjourned at 1753.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988

TUESDAY, 16 MAY 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Management Board of Cabinet:

Thomas, James R., Assistant Deputy Minister, Employee Relations and
Compensation Division, Human Resources Secretariat

Clark, Phyllis M., Director, Pension Policy Branch, Employee Relations and
Compensation Division, Human Resources Secretariat

From the Ministry of the Attorney General:

Norris, Keith, Manager, Office of Judicial Support Services, Courts
Administration Program

From the Association of Provincial Criminal Court Judges:

French, Paul J., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, 16 May 1989

The committee met at 1542 in room 228.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
(continued)

The Chairman: I recognize a quorum. The first item is that I wanted to have a subcommittee meeting, but that looks like it might be something we should leave until the end and that we should deal with what is before us right now.

We have representatives from the Management Board of Cabinet. Perhaps for purposes of Hansard, you could identify yourselves.

Mr Thomas: Yes. My name is Jim Thomas. I am the assistant deputy minister from the Human Resources Secretariat of Management Board of Cabinet. On my right is Liisa Tienhaara from my office.

The Chairman: Excuse me just a second.

I think, in fairness, Mr Sterling has indicated to me that there are orders in the House and one of the bills is one that he has to deal with. I have asked him if he would stay until it is called and then hopefully we can have Mr Runciman come in to take his place. But I think as a matter of fairness, if that does not happen, then we will perhaps have to take a bit of a recess until that can happen. Is that fair enough, Mr Sterling?

Mr Sterling: I think two things have happened this afternoon which upset me. Number one is that we had three pieces of legislation which were called and have been finished now, relating to the Ministry of Consumer and Commercial Relations which is a justice committee ministry. It has always been my understanding that the justice committee would not sit when in fact there were justice bills being called in the Legislature.

Having said that, it would not have really been that much of a problem because they were dealt with very quickly. But I think as the chairman, you should raise that with the government House leader and make known the feelings of our committee that if in fact we are sitting on Monday and Tuesday afternoons, they should not normally not call justice-related bills because often members on this particular committee would be required to debate those bills. Mr Runciman, for instance, was required. He is our Consumer and Commercial Relations critic and is also a member of this committee.

Second, they have called Bill 194, which relates to controlling smoking in the workplace. I expect that that is going to be on in about 15 minutes. I had originally thought that it would be called much later in the afternoon.

The Chairman: It is the last order of the day.

Mr Sterling: It is going to be called in about 15 minutes, as I understand it. I will not be able to be here because I am the lead person on that particular bill. I apologize to the witnesses and the other people here,

but it is basically out of my control in terms of that whole thing. Mr Runciman is going to come in this afternoon. I had hoped he would be here by now. Essentially, then, you have one member of our party who heard the submissions yesterday and you are going to have another member here today. We are going to try to write a report coming out of that particular matter. So I am going to have to excuse myself and I am not sure exactly what the desire of the committee is at this particular time.

The Chairman: You said you had 15 minutes if we can leave word with the House that when they are ready they—

Mr Sterling: I have to prepare a little bit. I am carrying the fight on this and I am probably going to be debating for a week. I did not expect it to come up this afternoon, so I need about 15 minutes, at least, to prepare.

Mr Offer: I am just throwing out the suggestion that members from Management Board make their submission to just get your comment; get their submission and their dealings with the Henderson matter before the committee with an agreement that we would not deal with the recommendations of this report until we call the steering committee, because Mr Sterling does not know how long he is going to be in the House on this particular legislation. We have the people from Management Board here but we would put on record that there would be agreement to not deal with any of the recommendations or our report, as it were, until we call our steering committee.

The Chairman: I should indicate as well that in addition to Management Board, as I explained to Mr Sterling, Mr French is here with his associate and if we can do anything to accommodate him maybe we could do what Mr Offer has suggested and get an Instant Hansard for your caucus in between now and the next day we sit, which is next Monday. It would give you an opportunity; let us know if it does not. Next Tuesday, I am sorry; Monday is a holiday.

It would give you actually an extra day, and we can receive your comments and if we are writing a report—I would suspect that there are some financial implications here that will require some time as well to be resolved. What do you think about that?

Mr Sterling: I am in agreement if you want to go ahead that way. I guess the only thing that I might ask, at a later time, after I have read the Hansard on it, is that I might want to ask some questions of these people on record.

The Chairman: I think that is fine.

Mr Sterling: Subject to me having to ask them to come back. I hope that does not happen, but—

The Chairman: If they are available. I have Mr Kormos, who wishes to speak, but if you are content with that we could proceed that way and use this afternoon productively. If Mr Runciman comes in he could at least be here to make sure—

Mr Sterling: I would have only asked after Management Board had given its presentation this afternoon. I would have asked at that time that Mr French be asked to respond. Now whether or not—

The Chairman: We can do that as well in your absence. We could have Mr French's response.

Mr Sterling Hearing his response—

The Chairman: Are you content with that then, that that proceed on that basis? By next Tuesday, if you find that you still need time with the Hansard, I think if you let the clerk know, I do not think any of the members of the committee would have any difficulty in terms of getting further time.

Mr Sterling: Will Hansard be ready?

The Chairman: We will put a rush on it.

Mr Kormos wanted to say something.

Mr Kormos: I am concerned about the point that Mr Sterling raises. Obviously some practical matters are that there are but two Conservatives and two New Democrats participating in this committee and I guess in virtually every other.

Howard Hampton and I could find ourselves in much the same situation very easily. He tells us that there is a protocol, that there is a standard that has been abided by, and it concerns me that that protocol seems to have been breached. Obviously my motives in saying this are perhaps more selfish than they would be in other circumstances, because I could see myself very much being in his shoes.

What is going to happen down the road? Mr Sterling is accommodating the committee. I am appreciating the difficulty that these people have being here, but what is going on here? Is this a standard or is it not?

1550

The Chairman: I think this is a little unique in that we would like to get on with it, because the report has been before us for a considerable period of time, and get the report out and into the House so that all the process of the judges' remuneration can be finalized.

Mr Offer is here as the parliamentary assistant to the Attorney General. I am sure he can speak to the government House leader and make certain that when we get to bills they will have this equal necessity to accelerate them, that we can in fact make certain we are not scheduling bills in the House on the days we sit on the justice committee.

Mr Offer: Just to clarify, the thought that I had in terms of having Management Board of Cabinet make its submission here with Mr French, and keeping in mind the recommendation by Mr Sterling in terms of allowing Mr French to respond after Management Board together with an agreement right now that we will not deal with the report of committee today, I made that in consideration of Mr Sterling having to be in the Legislature. I hope it is taken that way. It is not meant in any other fashion. Here we have people before the committee. The agreement is that we will not deal with the recommendations until we have, maybe at the call of the steering committee, the type of situation so that we can make certain we have a full membership.

Mr Kormos: I do not want to frustrate or prolong this, Mr Chairman,, but would you please address very, very soon the matter of what the protocol is?

The Chairman: Well, I will confer with the clerk and, if there is in

fact that protocol, we will have to send a letter to the House leaders advising of the difficulty we have. I think this is probably one of the situations where the adage, wherever it crept up from, "Justice delayed is justice denied," applies. I think the judges would agree with that, so I think we should get on with it. If you are content with the way it has been put forward—

Mr Sterling: I think there has been enough. I want to get on with this and I want the committee to go ahead even in my absence, provided I can at least have a chance to read the remarks before we draw a report. I think we should go ahead, notwithstanding I am not very pleased with the way the House leaders have organized the business for today.

The Chairman: I will speak to the clerk and, if that is a protocol, we will send a letter to the House leaders. All right, Mr Thomas, would you like to proceed?

Mr Thomas: I would also like to indicate that with us today are Phyllis Clark, Bill Rooke and Grace Ma, also from Management Board, who are here to assist in the answering of any questions you might have with respect to some of the details around some of the recommendations.

I would like to begin by indicating that it is a potentially delicate role that Management Board plays at this particular meeting. In my submission, we are here to offer assistance, and I am here to help provide some background with respect to the cost implications of the recommendations contained in the Henderson report.

I would submit that it is not the duty or the role of Management Board at this particular juncture to make recommendations of its own with respect to how the committee might or might not implement the Henderson report recommendations.

I suggest to you that is consistent with the position the government took before the Henderson committee, and I refer you to page 34 of the Henderson report on which the committee indicates, and I am reading from the middle of the page under the heading "The Ontario Government":

"For its part, the Ontario government chose to take no position before us on most of the issues within our authority, because, to use the words of the government's final submission to the committee, '[i]f the government were to make specific recommendations to the committee at this time, it would appear that the government had formulated a position prior to receiving the report of the committee, which would be inappropriate.'"

I believe those words also apply to the position that we ought to be in with respect to the committee's hearing today.

I wish to comment on the recommendations under four headings. First, I wish to address the salary matters; second, I wish to go over the pension recommendations; third, allowances and benefits and, fourth, some very brief observations on the legislative implications. There is a handout that has been distributed to you which I will make reference to when I reach the subject of pension recommendations, because it covers both pension and benefit data.

I would also like to make a preliminary observation before I comment on the salary recommendations on the cost aspects of the Henderson report in a general sense. As Mr French noted yesterday when he read the section of the

Henderson report at page 63, the report adopted the suggestion the government made, which was one of several the government made, with respect to principles, and that was the total compensation principle.

If I might just make the comment: At the top of page 63, what the report states is, "Not only should our package of recommendations be credible financially"—and I would underline that phrase "credible financially"—"it should also make sense as a whole." It seems to me that one of the issues the committee will need to come to grips with is, what does it mean to implement a package of recommendations that is credible financially?

Further, in addressing the cost implications, the Henderson report made some reference to it at pages 123 to 125. What the report concluded was that there were disagreements around actuarial assumptions that made it impossible or difficult for the committee to come to grips with the actual cost of the recommendations. What the report went on to say is that they wanted to put the issue of expense into perspective.

The report offered three reasons for recommending that this report be adopted notwithstanding a lack of a full cost analysis.

The first one, on page 124, is that in effect if the funds are coming from the consolidated revenue fund, the increase in cost, whatever its amount, will be small; as a percentage of the government's total budget, the cost of the Henderson report recommendations would be very small.

Second, the committee pointed out that the salary and other forms of compensation of provincial court judges has not been adjusted for a number of years.

Third, at the middle of page 125, the report notes that the evidence would seem to show that the people of Canada think sufficiently highly of the justice system to be willing to maintain its quality, whatever the cost.

I simply ask that in concluding what you should be doing with respect to the financial implications, you ask yourselves the question, is it credible financially to implement the Henderson report or parts of it without understanding the cost implications, on the grounds that it is a small percentage of budget or that Canadians in general think we should be willing to maintain its quality, whatever the cost? That is an issue I suggest you are going to have to conclude.

With respect to salary levels, Mr French made the submission yesterday that the association took the position that the announcement by the Chairman of Management Board of Cabinet—and I have handed out a copy of the news release that contains the announcement—should be viewed by the committee as an interim measure.

The only position I would like to put forward, and this is the only one I will all afternoon, is that with respect to that, it would be my understanding that the Chairman of Management Board in fact has announced a salary increase that was intended to be the increase effective 1 April 1989 for the year. That is a matter you may wish to give some thought to. That was an announcement that also contained retroactive adjustments for 1987 and 1988, of four per cent and 4.6. per cent.

The more troublesome issue the committee will have to come to grips with is the issue of whether to index, and if so, whether to legislate. Again, I am

not going to offer a position on behalf of Management Board of Cabinet, but Mr French certainly outlined for you in some detail yesterday the argument contained in the Henderson report for a form of automatic indexation.

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From the perspective of Management Board, that is certainly one conclusion you can reach. You might also note that to go to salary indexation would be precedential for the Ontario government. In other words, in the normal course with our collective agreements, with our arrangements with other groups of people, the salaries are not set by way of an automatic indexation for reasons that have to do with the fact they feed the wage spiral. It creates built-in inflation, unless there is a belief that the salaries of judges are somehow immune to precedent-setting potential because of the independence of the judiciary.

I could indicate, for example, that as a person who is responsible for collective bargaining with government lawyers, one of the first things they mentioned to me when they got the news release on 5 May was, "Did you notice that the judges are now making \$105,000?" I think one has to see it and indexation in the context of something that could potentially be precedent setting.

On the one hand, you have the arguments Mr French made yesterday which are the arguments contained in the Henderson report for a form of indexation. On the other hand, you have the issue of the extent to which this becomes a precedent. What I think is generally the case, and no one disagrees with this, is that whatever we are currently doing needs to be improved. You may wish to recommend that this process be addressed.

Those are all the comments I wish to make on salaries. I would just ask you to look at the handout I have provided which contains background notes on pensions, benefits, vacation and leave arrangements. I think if I just took you through that, I would cover off the bulk of the recommendations with respect to pensions and benefits.

Under the contents page, and you already have the summary of the recommendations either in the report or the materials that Mr French handed out to you yesterday, the pension recommendations are contained in recommendations 7 through 23. The benefit ones start at recommendation 24 and go through to 35.

If you go to page 2, and the pages are numbered at the bottom, it might be helpful to just have a brief overview of what is the judges' pension plan. It is a plan that was designed to recognize the fact that judges are appointed later in their working life, so they cannot get the long service in the judges' pension plan that people get in other plans.

The way the scheme works is that at 75 years of age, if they retire at 75, they receive a pension that is based on 55 per cent of their earnings. At 65, if they have an 80 factor—that means 65 years old and 15 years of service—they receive a 45 per cent pension. That pension is calculated on the highest year of earnings and it is indexed to the salary increases.

The next page outlines, for your assistance I hope, a comparison between, for example, the kinds of benefits and costs of the government plan, the Ontario public service plan—

Mr Polsinelli: Can we ask questions as we go along, technical questions, not philosophical questions?

The Chairman: I am in the hands of the committee but it would seem to me that if you could write them down, we will ask Mr Thomas at the end. I would like to ensure we get through the presentation. That is the most important thing.

Mr Thomas: I can go through this quite quickly.

The Chairman: I am in the hands of the committee if you want to do it that way. What is the wish of the committee?

Mr Polsinelli: May I suggest then that the wish of this member of the committee is that as we go along, if we have short technical questions, we would be allowed to ask them.

The Chairman: All right. What about the other members of the committee? Is there unanimous consent that is the way we proceed?

Interjection: Sure.

The Chairman: You are a very persuasive guy, Claudio.

Mr Offer: I heard two adjectives, "short" and "technical."

The Chairman: Let's not be critical. Okay, you have won that point.

Mr Polsinelli: Mr Thomas, on page 2, in terms of the judges' pension, if a judge reached the age of 65 but did not satisfy the 80 factor, would he still be entitled to a pension?

Mr Thomas: No, he would not.

Mr Polsinelli: Assuming he has 14 years of service, he could be forced to retire at 65 with no pension.

Interjection.

The Chairman: Just a second. Here is the difficulty with the questions. We have to have these words preserved for posterity. It is very important. Somebody is going to read this some day and realize we have done a masterful job here.

Ms Clark: If he is forced to retire, he would probably be eligible to get special consideration and therefore would get a pension.

Mr Polsinelli: Where does he get the special consideration from?

Ms Clark: The Chief Justice.

Mr Polsinelli: So the Chief Justice has discretion in terms of the eligibility under the pension plan.

Ms Clark: Yes.

The Chairman: Could you introduce yourself and give your title for purposes of Hansard?

Ms Clark: I am Phyllis Clark and I am director of the pension policy branch of the Human Resources Secretariat.

Mr Offer: Just a quick supplementary, short, right to the point: The question is, if the judge does leave with 14 years and does not get this special dispensation, then he would have no pension. It follows he would have no pension.

Ms Clark: It is possible, yes.

The Chairman: You can tell all these questions are coming from lawyers, who look at themselves as being potential candidates for this.

Mr Polsinelli: They are not entitled, assuming they do not satisfy the 80 factor.

Ms Clark: They would have a refund of contributions, plus interest.

Mr Polsinelli: If they have made no contributions, would they have a refund of the contributions that have been made by the government on their behalf?

Ms Clark: No, they would get back the 5.57 per cent they made for survivor pensions, plus interest.

The Chairman: It is the same as if you, or some people, do not get re-elected. If they do not make the five years, I gather they do not get their pensions.

Ms Clark: That is correct.

Mr Thomas: On page 3, then, is a comparison of the public service plan and the judges' plan to give you some idea of how two fairly adequate plans stack up.

Under the Ontario public service, the concept of funding is by way of matched contributions between the employer and the employee, each paying seven per cent. Under the judges' plan, the government pays all of it, which last year was 15 per cent of salaries. This year, because of the salary increase we announced, it will be 21 per cent. As Ms Clark mentioned, the judges pay 5.57 per cent for half the cost of survivor benefits.

The accrual rate of the OPS plan is two per cent. If you work for 20 years, your pension would be two per cent times 20 years, which is 40 per cent pension. For the judges, the accrual rate ranges from three per cent to 4.5 per cent, depending on your age when you were appointed.

In the Ontario public service plan, the salary that is used to calculate your pension is based on the highest average five-year salary. For the judges' plan, it is based on the single highest salary.

The Ontario public service plan is indexed by the consumer price index, with an eight per cent cap. With the judges' plan there is no cap, but the indexation is tied to the increase in the judges' salaries. The OPS plan is integrated with the Canada pension plan. The judges' plan is stacked, which

means judges will receive their Canada pension plan entitlements in addition to their judges' plan benefits.

Mr Polsinelli: What does "accrual rate" mean?

Ms Clark: When you get credit with a pension plan for a year of service, you can earn, for example, two per cent of the average salary for that year. That is the amount of credit you get towards your pension. So if you are earning \$100, you would get \$2 towards your pension.

Mr Polsinelli: How does that apply to the judges if the judges' plan gives them only 45 per cent at 65 if they qualify, or 55 per cent at 75 if they qualify? There does not seem to be any type of accrual rating there. It is just a straight 45 per cent or 55 per cent.

Ms Clark: That is true. However, if you divide the 45 per cent or 55 per cent by the number of years they have served, you can work out an effective accrual rate, which varies between three per cent and 4.5 per cent. It is not the same as an accrual—

Mr Polsinelli: This is not a true accrual rate as we would understand it in various pension plans that operate. This is your estimate of what the accrual rate could be if you did some fancy figuring.

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Ms Clark: It was not that fancy. I said it was the Chief Justice. It is if the judicial council expresses the opinion that approval of a judge should not have been refused, then the judge can get a pension.

Mr Polsinelli: On that point again, are there guidelines the judicial council has to follow in terms of exercising, I take it, some type of discretionary authority?

Ms Clark: I am sorry; I do not know.

Mr Polsinelli: Could we get that information please?

Ms Clark: Certainly.

Mr Thomas: I think it is important that you spend a bit of time on page 4, because it should be noted that the salary increase that was announced does not just increase the judges' salaries; it also has a positive impact on the judges' pensions. What we have attempted to show here is the implication of the salary increase. On the left side is the old salary of \$81,500 and below that the new salary of \$105,000. On the right side are two columns that would indicate to you what would happen to the annual pension benefit of a judge who was entitled to a 45 per cent pension or a 55 per cent pension, depending on whether he or she was 65 or 75.

You can see that the pension benefit itself has increased by approximately \$11,000 a year because of the salary increase, because the judge's pension is calculated on the single highest year and so the judge's salary has now had its own effect independent of implementing any of the Henderson report pension recommendations. Just by virtue of the salary announcement, the pension benefit has increased in the amounts that are shown on that page and so has the government's obligation.

Its future obligation has risen from \$33 million to \$57 million. What that means, for example, is that on an annualized basis our contribution has increased from 15 to 21 per cent. That means this year our funding requirements for the judges' pension plan have risen from \$3.2 million to \$5.6 million. That is a 74 per cent increase. So what this page shows you is two things: It shows you the impact on the judges' benefits by way of the salary increase alone and the impact in terms of the cost to the government.

On page 5, I thought it might be helpful to give you some background that has to do with income tax guidelines. May I start by indicating that the provisions of the current judges' plan are richer than permitted by the income tax guidelines for deferred income. When the new legislation is introduced, those guidelines will become law. So right now the judges' pension plan is offside and when the new legislation is introduced the guidelines that the plan exceeds will become law.

That legislation is expected later this year, and of course at that point the design of the plan will have to be reconsidered. You may want to consider whether in looking at the recommendations with respect to pension design, any structural change at this time might be premature. Down at the bottom is a table that would give you some assistance in knowing what the guidelines are and what the judges' plan is.

For example, if I look under "2. Maximum Pensions," at the guideline maximum accrual rate of two per cent, a person working for 25 years—I have just picked the middle one—would be entitled to a maximum pension under the guidelines of \$42,875. The judges' plan for 25 years is \$57,756. So it is in effect offside with respect to the income tax guidelines, by approximately \$15,000.

I should also indicate for your information that those numbers on the left would be the maximum pensions within the Ontario public service, and for the most part that would mean there would not be the Canada pension plan benefit on top of it. A person who has worked for 25 years would be getting a pension of \$42,875. The judges' pension plan, because it is stacked, gets the \$57,756, plus CPP entitlement of \$6,675.

Mr Polsinelli: Do the income tax guidelines dealing with tax-deferred income apply to the taxpayer's portion of the contribution to the pension plan, or do they apply to the total contribution, that is, both the employer and the employee contribution?

Ms Clark: They apply to the total contribution, but what we are talking about here is what you can take out, not what you can put in. I think what you are talking about is how you can get income tax deductions for contributions.

Mr Polsinelli: That is right.

Ms Clark: The maximum amount you can get on that is nine per cent.

Mr Polsinelli: So you are suggesting here that no matter how rich we may want to make this pension plan, the federal government may say at a future point, "I'm sorry; you cannot pay out this amount of money."

Ms Clark: Yes. They are going to face the same dilemma with their federal judges' plan when they bring forward these maximum guidelines. They

might have to reconsider the design of the federal judges' plan as well, because it will have the same offside provisions.

Mr Polsinelli: I apologize for these questions but I am not familiar with that in section 37, subsection 5 of the Income Tax Act. It is a difficult concept for me to grasp. Effectively, the Income Tax Act at this point is saying, "You cannot buy more of a pension plan than we are saying." Is that what the federal government is saying through its Income Tax Act, that you cannot buy a plan that pays out more than X amount of dollars?

Ms Clark: They are saying there should be notional maximums on the amount you can earn in a pension plan, and that when they introduce the new legislation in the fall, it will no longer be notional; it will be law. So in fact, you can only get \$1,715 per year of service. They will probably index that to \$1,722, but they have indicated that then they will keep that \$1,722 until 1995 as the maximum amount per year of service which you can gain. Any registered pension plan that wants to get income tax deductions will have to obey that maximum.

Mr Polsinelli: Is there any possibility they will grandfather any existing plans?

Ms Clark: It is unlikely. What they will probably try to do is have those kinds of plans considered a registered compensation arrangement where they take 50 per cent of the immediate contribution plus any income earnings in the plan.

Mr Polsinelli: The immediate contribution of—

Ms Clark: Both employees and employers. So they have an immediate tax deduction they get off that plan, plus they will also get 50 per cent of any income earned within the plan during that period. That will be a refundable tax, but they will get the money immediately.

Mr Polsinelli: It sounds like a fairly complex problem for us to deal with, given the information we have in front of us. Would it be possible to provide us with a little more information so I could get a slightly better grasp of the issue?

Ms Clark: Certainly.

Mr Thomas: I could have given that answer to you but I wanted to give Ms Clark a chance.

Mr Polsinelli: It would have explained it just as little if you had given it to me.

The Chairman: Can we speak up? Susan Swift, our researcher, is having difficulty hearing you.

Mr Thomas: Certainly.

The Chairman: It was not you, Mr Thomas. I was referring to the member for Yorkview.

Mr Polsinelli: I am speaking into the microphone.

The Chairman: Well, you have your hand like that.

Mr Polsinelli: That is because I did not know what I was saying.

The Chairman: Go ahead.

Mr Thomas: The other matter you may want to just make note of on page 6, and I do not think we need to spend any time on this, is that I think everyone knows this is a volatile year for pensions in any event and it is another reason, again, if you were giving some thought to what you should do with the pension recommendations, to consider deferring them this year.

Let me turn to page 7, which is an analysis of what I think we might conclude is the major cost recommendation with respect to the Henderson pension recommendations. That is the one that would increase the amount of entitlement by 10 percentage points. That means that the 55 per cent number for age 75 would go to 65 per cent and the 45 per cent would go to 55 per cent.

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What we have attempted to do here is to show in the table that is in the middle of the page what the cumulative effect would be of the salary increase and implementing recommendation 7, because they are cumulative.

For example, a judge who retired two weeks ago, before May 5, at the salary of \$81,500 would be entitled to a 45 per cent pension, which is \$36,675 per annum. If you then look at that 45 per cent column, the number below it, you will recall, the \$47,250 figure, is the improvement just due to the salary increase announcement. If you then go over one column to the right, that figure of \$57,756 is the new pension that the person at age 65 would be getting if you were to implement recommendation 7, because that judge would have gone from a 45 to a 55 per cent factor and would have gone from \$81,500 to \$105,000.

In effect, the judge's pension itself, by the combination of the salary increase and the implementation of recommendation 7, would increase by 57 per cent, from \$36,000 to \$57,000. I hope this table is helpful to you in understanding the impact from the judge's perspective on the combined salary increase factors and increasing the percentage factor.

Mr Offer: If we compare this salary schedule and the pension which results in terms of recommendation 7 and move it back to your page 5, this is now moving farther away from what the federal government is apparently going to do. Do you have any figures on what the impact might be in terms of this \$105,000 at 65 per cent in relation to the federal proposals?

Ms Clark: It would be exactly the same problem. They would still be—

Mr Offer: Different numbers?

Ms Clark: They would just be farther offside. Theoretically, what happens if you break the income tax guidelines is that they just deregister your plan, which means you would have no more tax deductibility on anything that you put into the plan. It would just make it farther offside.

Mr Offer: In which case you would get into that situation where ostensibly the judge would be receiving it all basically in one year, getting some deferment I guess—

The Chairman: Mr Offer, could you speak into the mike?

Mr Offer: I was hoping they would not pick up what I was saying, actually.

The Chairman: I thought maybe you had some devious plot.

Mr Offer: Basically you would have the same mathematics that would have to go through in terms of these recommendations and they would be farther offside with the federal proposals.

I know you are working up some figures based on a response earlier. I am wondering whether it is possible to get something like that in terms of the actual recommendation.

Ms Clark: Certainly.

Mr Offer: Thank you.

Mr Thomas: That concludes what I believe is the analysis of the impact of the major recommendation.

I do not want to spend a great deal of time on the others unless there are specific questions, but recommendation 8 on page 8—and we have tried to group these in order of potential impact—is a reward for long service/appointment before age 50. It would be an additional 0.5 per cent for each year of service beyond 15 years.

You might think of that in connection with the philosophy of the judges' plan, which has been in effect not to have an accrual rate. It is to have an end-point percentage that is not based on length of service once you have met the requirement. This seems to be a potential move, a shift in the philosophy of the plan; and again, it would take the plan further offside if implemented.

Other policy issues are found on page 9. I use the words "policy issues" advisedly, in that these are distinct from what we will get to in about two pages, which are the housekeeping ones. I do not intend to spend any time on them, unless there are specific questions.

In regard to the other policy issues—and again, we are not commenting on whether we think they should be implemented; we are simply trying to point out some of the implications of them—under recommendation 14, increasing the survivor pension to 60 per cent from 50 per cent, and doing it voluntarily, is consistent with the Pension Benefits Act.

Under recommendation 15, the increase in the insurance coverage for retired judges increases the allowance to \$3,000 from the previous arrangement, which was \$2,000 decreasing over time. That has a minor cost impact.

Recommendation 16 would index spouse's allowances by salary adjustments. You should note that those allowances already are indexed, similar to the public service plan, which I pointed out before was a consumer price index capped at eight per cent.

Under recommendation 17, the cost of the survivor benefit, we simply indicate that the Pension Benefits Act did not contemplate necessarily that the cost should be passed on automatically to the employer. The plans we have

with respect to the Ontario public service would be to require the pre-retired person to bear the total cost of the survivor benefit increase. The proposal in the Henderson report is a shared responsibility.

Under recommendations 19, 20 and 21, with respect to the retroactive impact, you have the arguments in Henderson in favour of it. We can simply indicate to you, on the other hand, that retroactivity is not generally encouraged in pension plan changes because of the cost increases that have not been funded in the past and now, all of a sudden, are owed going back some time.

Recommendation 44 deals with part-time work while receiving a pension and, again, the arguments why you would do it are well set out in the Henderson report. We simply also indicate that you may wish to look at what would be viewed as two payments from the public purse. You might also wish to consider that if there was the recognition of part-time work, that might encourage earlier retirement and thereby increase again pension plan costs.

The housekeeping issues are on pages 11 and 12. I do not intend to go through them, unless the committee members have specific questions on them. There are some eight recommendations that all have to do—

The Chairman: I think, unless members of the committee want to, we can probably just skip through that.

Mr McGuinty: I had a question on the definition of "spouse," but I would not dare raise it in public.

The Chairman: We will send a copy of the Hansard to your wife if you raise it.

Mr Thomas: The one we were talking about is the one that has to do with the Family Law Reform Act, Mr McGuinty.

Mr McGuinty: Yes, I know that.

Mr Thomas: Okay. Under "Costs," on page 13, we have attempted to summarize on one page some of the cost impacts of the pension reform proposals. Bear in mind that, quite frankly, we have not had an opportunity to cost all of them; in fact, what we ended up costing is the major one, that is, the 10 per cent one, recommendation 7. So that if you wanted a more specific and detailed costing, that would be a thing we could look into, but we have not done that at this point.

In regard to the cost increases caused by the salary announcement, we go from 15 per cent to 21 per cent of salaries. From the government's perspective, that adds \$2.4 million annually to the ongoing cost of the plan and increases the government's future obligations from \$33 million to \$57 million.

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The proposed 10 per cent increase in pensions, plus survivor benefits, adds a further eight per cent to the government's obligations, so that now we have gone from 15 per cent of salaries to 29 per cent of salaries and our obligation on an annual basis has gone up a further \$2.1 million, our future obligation from \$57 million to \$78 million.

Mr Polsinelli: Mr Thomas, what does "obligation" mean?

Ms Clark: You could consider that much like an unfunded liability except that this plan really is not funded, so we do not like to talk about it in those terms. What it means is that the liabilities of the plan would increase to the extent that it would cost us \$57 million to offset those liabilities, and we would do that through the percentage of salary that we made, the payments that we made, towards that plan.

Mr Polsinelli: So if I thought of it as an unfunded liability—

Ms Clark: The actuaries would not like that because they would think that you had bankrupted the way we talk about pension plans, but notionally it might be acceptable.

Mr Polsinelli: There is a notional similarity. Okay.

Mr Thomas: There is one further factor that I might just draw your attention to and that is the last bullet on page 13. If you take into account the possible change in retirement patterns because more people may retire because of the enhanced benefits, the actuary suggests that if you were to do that and the recommendation for part-time work, the cost may increase a further four percentage points. What you can see then is that our obligations, expressed as a percentage of salaries, will have more than doubled through the implementation of recommendation 7 and the salary increases. Those are the comments that we wished to make with respect to pensions.

With respect to benefits, I will go through this part extremely quickly. On the benefits section, first of all, we acknowledge the legitimacy of the Henderson report's suggestion that it would be helpful to have a compendium of benefits. Right now they are found in a combination of regulations, some made under the Ontario Public Service Act and the others made under the Courts of Justice Act. The Courts of Justice Act is the statute that has the regulation that seems to cover most of the benefits and it incorporates into it by reference certain regulations that have to do with Ontario public service benefits that are found in the regulations to the Public Service Act.

You have in effect several places you have to go to, to find all of the regulations that deal with benefits. We see that there is some merit in consolidation, and certainly it would be consistent with the Henderson report's recommendations with respect to enhanced independence to have them separate.

Page 16 is our attempt to help you with a comparison between judges' benefits and those in the Ontario public service. Again, we are not putting this forward to indicate that we think the judges should not be treated differently. I think that has been acknowledged. We are simply putting it forward to give you a comparator, to give you some sort of benchmark that may be of some assistance to you in looking at the benefit.

Mr Kanter: I have a question. I presume that the judge's basic life is 0.5 times salary, not five times salary.

Mr Thomas: No, it is five times. It is five times larger.

On the left side are those benefit provisions that are identical for judges and people employed in the Ontario public service: Ontario health insurance plan, supplementary life, supplementary health; on page 17, dental termination payments, management compensation option, leaves of absence and workers' compensation. The differences are listed on the right side, and

include the basic life that Mr Kanter made reference to, the short-term sickness plan—judges get 130 days' full pay; OPS members get six days' full pay and 124 days at 75 per cent of regular pay, etc.

I might mention that the management compensation option on page 17, for anyone who is not familiar with it, is a plan whereby people in the management and executive ranks of the Ontario public service get five additional days' leave, in effect, in recognition of additional time they put in for overtime. It is a compensatory arrangement. That is also incorporated into the benefits for judges.

On page 18, the first three, 25, 26 and 27, would appear to be close to housekeeping recommendations, so I would simply like to comment on number 28, which I think is a matter you may wish to consider.

Under recommendation 28, the Henderson report proposed that termination and death payments cease to be available to judges. We have set out what they are there. The termination payment, for example, is one week for each year of service, so it is an accumulated benefit. From a judge's point of view, he has earned it, as he has extended his working life by one week per year of work. When a judge retires, he might get 15 or 20 weeks of termination payments, representing 15 or 20 years of service.

We simply indicate to you that this is a benefit that judges and members of the Ontario public service have been thinking that they have built up, and I think you should give that some consideration in looking at whether this is something that you want to implement.

I make the point that from the government's perspective, it is a fairly minor cost saving. The Henderson report seems to attempt to balance the books among a number of recommended cost-adders, this being one that would take some away. In fact, it would seem that it does not save very much in the way of cost from the employer, but it might be quite a visible item from the individual judge's perspective.

Mr French quite properly pointed out to me that I should be careful with the last line on page 18. I would like to withdraw that, because I was not trying in any way to suggest that the judges are in an employer-employee relationship.

Numbers 29 and 30, on page 19, are to be read together in effect, because under recommendation 29 the management compensation option would be abolished and therefore the judges would lose five days' leave, but under option 30, which is the companion recommendation, the judges' vacation would be extended from the current one month to six weeks.

As I understand it, one month is usually interpreted as 22 days. Currently they have 22 days plus the five MCO days, which is 27 days. The Henderson report recommendation for vacation would be 30 days. So we are talking about the difference between, in effect, a 27-day vacation leave arrangement and a 30-day one. I believe that is the combined effect of a reasonable interpretation of recommendations 29 and 30.

Mr Polsinelli: Mr Thomas, can you go over that again, please? In recommendation 30 they are talking about weeks. When they talk about a week, are they talking about the five-day week?

Mr Thomas: Yes, but the judges currently get one month. The act says

"one month," and one month has been interpreted, I believe, as being 22 days. If you take the one month plus the one week of MCO days, you get 27 days, 22 plus the five. If you were to go into a six-week vacation, it would be 30 days.

Mr Polsinelli: So effectively the recommendation is an extra three days a year.

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Mr Thomas: Effectively.

By the way, I have also set out in here what the provisions are with respect to the OPS, which is a sliding scale, if you will, depending on how long you have worked with the Ontario government. For executives it starts at four weeks. After 16 years you get five weeks and after 29 years you get six weeks, all plus the MCO days. That is the effect of those combined recommendations, Mr Polsinelli.

Recommendations 31 and 32 deal with maternity leave, and there are several aspects to the recommendation. One is that maternity leave be available to judges without the one-year waiting period that exists in the Ontario public service. The rationale seems to make some sense. In the case of judges, they are appointed with security of tenure—and Mr Henderson makes that point—and therefore they are appointed under a different set of arrangements than the Ontario public service employees, who are on probation for a year. So, there may be some reason to legitimately look at a difference in treatment as to whether they should have to earn eligibility, if you will, by working for a period of time.

With respect to the amount, the Henderson report makes reference to the fact that in the Ontario public service, we pay employees 93 per cent of their salary for the 17 weeks of maternity. That salary is a combination of Unemployment Insurance Commission payments plus a government top-up to get you to 93 per cent. It is that top-up amount, whatever amount that is, that the judges get, but because they are not in UIC, they do not get the UIC part. The Henderson report was critical of the government's apparent unfair or unequal treatment of judges versus employees of the OPS, because the judges were not getting the UIC. While that may have some merit, I also point out to you that judges do not pay into UIC either, so there is no contribution required of judges.

I think that is all I can assist you with in respect of the recommendations on maternity leave.

Parenting and adoption leave: In the Ontario government, we do grant adoption leave as if it were maternity leave, so that is a matter that I hope may be of some assistance to you. Judges are not granted adoption leave.

There is no provision at the present time for paternity leave, which is again a matter that is addressed in the Henderson report, although it is under consideration by the Ontario government as to whether or not paternity leave ought to be granted.

With respect to leaves of absence, with or without pay, in the current arrangement there is a regulation, which I will not get into, that permits deputy ministers—and chief judges are designated to have deputy minister status for the purpose of this section—that permits a Chief Judge to grant a judge up to, I believe, two years' leave with pay to pursue employment, and

with the permission of the Deputy Minister of the Human Resources Secretariat, to go up to five years of paid leave.

What the Henderson report said was, if we are going to separate the judges' benefits and draw that distinction between the independence that judges should have and recognize therefore that they have a right to their own discretionary treatments, then we ought not to have an arrangement whereby a Chief Judge has to go to the Deputy Minister of the Human Resources Secretariat for discretion to go up to five years.

There is some merit in that. On the other hand, the recommendation would restrict the amount of leave that a Chief Judge could grant with pay, I believe, to one year. That is substantially less than the potential that currently exists for chief judges going to the Deputy Minister of the Human Resources Secretariat.

My point is, I do not think there is evidence before you that would help you to understand easily the implication of that recommendation. How many people need it? How many people want it? How restrictive would it be if this recommendation were implemented? How would this curtail or enhance the ability of judges to get the kinds of leaves they need?

The Henderson report actually made some reference to the information problem on sabbatical leaves, which is perhaps a related topic. At page 117, the Henderson report, under "Sabbatical Leave," simply said, "We favour the further investigation of this topic." It goes on to explain: "We are not able to recommend a leave program based on the university or other model. Much thought will need to be given to the type of work a judge will or could do," etc.

My point is simply that on the whole issue of leaves, I am not sure if there is enough information that would assist you in making a recommendation under recommendations 34 or 35 for which you would understand the implications.

Mr Polsinelli: Mr Thomas, would it be possible for you to supply us with additional information? Is anything of that nature available through Management Board of Cabinet?

Mr Thomas: I am not sure that I can be of assistance. Mr Norris is here also from the Ministry of the Attorney General. Whether there is information that is available is perhaps a matter that we could check with him and get back to you on.

Mr Polsinelli: If there were limits, for example, on the number of judges from any particular court who would be entitled to a leave at any particular time, would that make it easier in terms of assessing, say, the cost implications or the implications on the system, taking one or two judges out of it? I mean, could you draw a number of scenarios perhaps through your offices or the Attorney General's offices and look at having an open-ended system where the chief judges could grant sabbatical leave and extended leaves, or perhaps a number of other scenarios where you have one per year or two per year or whatever?

Mr Thomas: If I can indicate, for the record, Mr Norris has indicated to me from the back of the room that he could provide additional information on that subject.

Mr Polsinelli: I know I would appreciate receiving that in terms of

looking at this recommendation.

The Chairman: I have Mr Kormos. He has indicated that he is prepared to wait until we finish. Mr Kanter, are you trying to get on the long-term list or the short-term list?

Mr Kanter: The short-term list, just on this very same subject. I appreciate the interest in sabbaticals and things like that, which may be covered under this section. I read it somewhat differently. I read it to mean perhaps other employment, such as with a royal commission, an inquiry or something of that nature. I am wondering if either Mr Thomas or perhaps Mr Norris might provide any information as to whether that is a factor. I know that judges at other levels have been appointed from time to time by governments to do certain things. I think of Judge Thomson, for example, the Social Assistance Review Committee report and things like that. Was that intended in this section? Is there some provision to allow for judges to assume other employment at the request of the provincial or other levels of government?

Mr Thomas: Mr Kanter, are you referring to the sabbatical leave provisions or the extended leave ones that I just went through under recommendation 34 and 35?

Mr Kanter: I am not referring so much to a specific section as to what I believe may be the practice whereby I am asking, is there a provision in the Henderson report or could you comment on a provision whereby judges may be asked from time to time to serve what I am calling a government function as a royal commission or a commission of inquiry? Is that foreseen by the Henderson report?

Mr Thomas: The current arrangement, Mr Kanter—and I do not have the precise wording.

Mr Kanter: If it is not possible to answer, I will—

Mr Thomas: No. Just give me one minute.

Mr Kanter: I appreciate that. I just want to make sure that there is some provision for that possibility to occur.

Mr McGuinty: I was confused by this. I was concerned by this reference to sabbatical leaves and the interpretations some of my colleagues put on it increase the reason for my concern. I am surprised that my old friend Gordon Henderson, who is also a governor of my university, should allow this kind of thing to appear in the report.

I am not sure why much thought has to be given with regard to a sabbatical. The aims of a sabbatical traditionally are very clearly stipulated and understood. It could be any activity, be it research, travel or often a work assignment, which could in some way be construed to enhance the efficiency of the man on the job. That is really what a sabbatical is all about. I am not sure why it is stated here as though it were something very abstruse and complicated. It seems to me that it goes without saying that judges, like anyone else—even politicians, God knows—should have time off periodically to do work not immediately related to their sphere of activity. It could be research, as I said; it could be serving elsewhere; it could be sitting alone in a room with a book, which is not a horrendous shirking of responsibility, I think, not even for judges.

I am really confused. I think the report did itself a disservice in dismissing a very legitimate consideration in a rather offhand way.

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Mr Thomas: If I may just comment, not so much on that, because, as I indicated before, I am going to do my best not to take a position on these issues, but with respect to the issue that Mr Kanter raised? Perhaps Mr Norris from the Ministry of the Attorney General, who is now at the table on my left, might be able to assist.

Mr Kanter, under section 75 of the Public Service Act regulations, there are certain provisions that seem to be incorporated into the judges' arrangement that permits leave of absence for the purpose of undertaking employment under the auspices of the government of Canada or other public agency in the private sector. It then goes on to permit a deputy minister, who is deemed to be a chief judge in another regulation, to grant an employee leave of absence with pay for up to two years; and then goes on to permit, with the approval of the deputy minister, Human Resources Secretariat, up to five years.

Mr Norris, I do not know if you can assist in terms of how it actually works with respect to judges.

Mr Norris: This actually did happen this past year with Judge Hamlyn in the family court in Ottawa. He was granted under this section, I believe, one year's leave of absence without pay and served in the Tax Court of Canada for that year. He was paid by the Tax Court of Canada. I know from conversations I have had with him that he very much enjoyed the year.

Mr Kanter: That is very helpful. That is the kind of thing that might perhaps be included in the general compendium the Henderson report suggested be compiled.

Mr Thomas: If I might go on, then, and just cover briefly the last few matters.

Mr Polsinelli: Before you do that, I am still a little confused in terms of what this section of the report is actually recommending, at the bottom of page 115 and page 116, where it tries to explain the existing situation and then the recommendation. It seems to me that what they are recommending under recommendations 34 and 35 is very little more than what they actually have, taking aside the whole sabbatical question.

Mr Thomas: That is one interpretation. You could also argue that it is less than they currently have. The last sentence of the recommendation on page 116, just above "Chambers days": "We recommend further that the Lieutenant Governor in Council have power, on the recommendation of the chief judge, to grant a judge up to one year's leave of absence with pay on special or compassionate grounds and up to three years' leave without pay or sick leave credit accumulation." It may be that it is not as generous a discretion as exists now.

Mr Polsinelli: But is that a correct interpretation? Is it a correct interpretation that what they are recommending is less than the discretion that presently exists for the chief judge and the Attorney General?

Mr Thomas: That is my interpretation of it.

Mr Polsinelli: That is the way I read it too, unfortunately.

Mr Thomas: There are several more matters I would like to just briefly comment on, and now that Mr Norris is with us at the table, I really had nothing I wanted to say from the perspective of Management Board on the issue of allowances, which is found in recommendations 36 to 42. My understanding from our discussions with the Ministry of the Attorney General is that the kinds of proposals and recommendations that are contained therein are not dissimilar, in fact, to the way the judges are remunerated, but I might just ask Mr Norris to comment on that.

Mr Norris: Okay. Starting with recommendation 36 on mileage allowances, the kilometre rates for operating one's own private automobile are set by Management Board and we simply reiterate them in our guidelines. It is not your part of Management Board that deals with it, I guess.

Other travel expenses: That they be "reimbursed for all travel and transportation expenses certified by the chief judge to be reasonable and to have been incurred in the course of assigned duties." This is not currently the case.

Meal allowance: That reasonable meal expenses be "incurred in the course of judicial duties." The ministry guidelines have set limits: \$7 for breakfast, \$9 for lunch and \$16 for dinner, which the judges sometimes find difficult to meet in some places. The chief judge routinely authorizes these to be exceeded and the ministry pays them. The recommendation is, in essence, something that is already in place.

Conference allowance: "We recommend that...judges be entitled to reimbursement for any fees and other expenses." Again, this is essentially what is already in place.

The incidental allowance of \$2,000 is doubling the current one. Judges are reimbursed for expenditures on certain categories of things that are set out in the regulation—expenditures on clothing, on books that are not normally supplied to them and on memberships in judicial organizations that they can claim against this \$1,000. They can carry over from one year to the next amounts in excess of the \$1,000, but they do not carry over the amounts that they did not spend in the year.

The representational allowance for administrative judges is something that we do not have at all at the moment. Federal judges do have them.

The Vice-Chairman: Are there any questions from the members on any of those particular items? Do you have anything further to add, Mr Thomas?

Mr Thomas: Just the last point. I indicated at the start that there were four matters I was going to talk about. The last one was legislative implications. I might just briefly indicate that you, again, have the arguments within the Henderson report as to why you would want new legislation from the aspect of independence of the judiciary. You may also want to consider whether you would, in fact, need such legislation if you were not to put a legislated indexation formula into effect. Certainly there is support for the proposition that, in any event, something needs to be done to clean up a compendium of judges' benefits and allowances and things like that.

I guess the final point is that I leave to you, then, the final comment—I would think that some consideration ought to be given to the

financial implications, if you accept the proposition that the total compensation principle adopted by Henderson should apply, that your recommendations and Henderson's recommendations need to be financially credible. That means in part from a cost standpoint and in part from the aspect of whether these kinds of increases are proper.

You may conclude that they are when you balance all the arguments that have been made by the Henderson report, or you may conclude that something more needs to be done in terms of looking at them when you see the kinds of cost implications we have tried to put out to you this afternoon.

The Vice-Chairman: Are there any questions on those final remarks? Thank you, Mr Thomas and Mr Norris.

Mr Polsinelli: Have we moved into the other phase where we can now ask other types of questions? Do we still have time?

The Vice-Chairman: I understood that it would be brief, technical questions. Do you want to ask questions?

Mr Polsinelli: Perhaps when Mr French comes back he could discuss this.

The Vice-Chairman: Excuse me, Mr Polsinelli. Did you want to go first, Mr Kormos? Your name is first on the list.

Mr Kormos: I do not care.

The Vice-Chairman: It does not matter? Okay, Mr Polsinelli, proceed.

1700

Mr Polsinelli: In terms of the existing pension plan and the pension recommendations, it strikes me as odd that a provincial court judge, if he satisfies the 80 factor, will receive his 45 per cent pension at 65 and if he does not he is out in the cold.

Would you be able to talk about that a little bit longer in terms of the rationale or the reasoning that was initially used in terms of setting up that plan, and in terms of the appointment of the existing judges—I do not know whether or not you have any statistics—whether they were appointed prior to being 50 or later than 50? How does the existing plan fit with the provincial court judges we now have on the bench?

Mr Thomas: Ms Clark, could you answer that?

Ms Clark: I cannot answer the second one. Mr Norris may be able to answer that, but I can reply to the first one about the pension plan.

Let me just read one article in the pension regulation that shows it is not quite as draconian a plan as you might expect.

"A judge who has attained 65 years of age has credit for at least five years of full-time service and ceases to hold office, for the reason that he is unable to serve in office due to injury or chronic sickness, is entitled to an annual income continuity payment during his lifetime."

There was another one we also talked about:

"A judge who is refused the approval of the Chief Judge to continue in office is entitled, if the Judicial Council expresses the opinion that the approval should not have been refused...to an annual income continuity payment."

There is a third section:

"Where a judge described in section 2 ceases to hold office, and the Lieutenant Governor in Council is of the opinion that the ceasing to hold office was conducive to the better administration of justice, the Lieutenant Governor in Council may direct the board to authorize payment to a judge."

It goes on to specify the payments.

So there are options where a judge is able to receive payment.

Mr Polsinelli: But those seem to be options where the judge is incapacitated or is not physically capable, for one reason or another, to continue service—

Ms Clark: That is true.

Mr Polsinelli: —or perhaps an easy way of getting him off the bench if he is not performing properly, the Lieutenant Governor recommendation. But if a judge, at 65 after seven or eight years of service, were voluntarily to choose to no longer serve, he would not be entitled to anything.

Ms Clark: Except his single contributions plus interest.

Mr Polsinelli: It seems odd. Perhaps we can see how that fits in with the existing appointments.

Mr Norris: The demographics of the judicial appointments process: Most judges seem to be appointed in their late 30s through the 40s into the early 50s. This is not to say there are not some that are appointed later. There was one appointed two weeks ago who was 63—

The Vice-Chairman: Excuse me, I wonder if Mr Norris and Mr Polsinelli could both speak a little bit louder, so that the microphone will pick it up. I think it would be easier for everybody.

Mr Norris: In my experience in three and a half years with the plan, there has been no one who has fallen between the cracks. There are several people, under a grandfathering arrangement, waiting for the Lieutenant Governor in Council to decide on whether they should have an enhanced benefit.

The Attorney General (Mr Scott) wrote several years ago asking the provincial courts committee to make recommendations about how these cases should be dealt with. This provincial courts committee found that it ran out of time before it could deal with that issue and offered to come back and sit later.

Mr Polsinelli: It seems strange to me that the provincial courts committee, looking at the whole issue of pension plans, did not recommend an accrual basis for the plan, with perhaps an vesting period of five years of service or three years of service.

Could they not have accomplished the same type of payout to the judges after 15 years' service with an accrual basis of, say, three per cent a year for 15 years and a vesting period of, say, three, four or five years?

Would that type of plan not have solved perhaps the problems—I guess not the judges who are now falling through the cracks; you indicated there are not any falling through the cracks—but the insecurity or the vagueness in the whole thing?

Ms Clark: Yes, if you had a gradual accrual rate, you would have accommodated the people who do not serve for 15 years. You do have to remember that this plan is not registered under the Pension Benefits Act, and one of the provisions of that act is gradual accrual. That could indicate that when the plan was designed, they chose the route to reward 15 years' service specifically. I am not saying I do not know how it was formulated. You could get the same thing you were talking about, a three per cent accrual rate for 15 years, but they did not choose that.

Mr Polsinelli: In terms of judges who only have five or six years' service and are entitled to receive something through the order of the Lieutenant Governor, do they end up getting the 45 per cent or do they get a pro rata amount?

Mr Norris: Again, with very limited experience—the plan has been in for only about four years; I have been with the ministry for about three and a half—the judges who have retired without having met the basic service requirement of the plan have all done so for medical reasons.

Mr Polsinelli: So they have retired for medical reasons; they cannot provide further service after 65; they do not have their full 15 years. They are getting something. What are they getting? Are they getting the full 45 per cent? Are they getting a pro rata amount of the 45 per cent? Or do they fall under some other type of disability provision?

Mr Norris: There is a provision in the plan that if a judge cannot continue by reason of ill health, he gets the maximum that he would have received had he continued to serve to age 75, and that is 55 per cent. So a judge—as we had, not that long ago—with six years' service at age 68, who cannot continue by reason of a medical condition, receives 55 per cent.

Mr Polsinelli: So in actual fact this plan may be more generous than it seems to be.

Mr Norris: I think you perceive a design gap. It is true that someone who wants to leave because he just wants to leave—there is no medical reason whatever—is not eligible for an ongoing pension.

Mr Thomas: Perhaps I could assist, Mr Polsinelli. On page 26 of the report there is a description of the special arrangements, which we may or may not wish to get into further but which may help to answer some of the questions you are raising. It goes through a description of what happens to the percentage if they join at age 60 or later and whatever.

I might commend that part to you as a further explanation, to try to answer some of the questions that you are raising about shorter-term service appointments.

Mr Polsinelli: I think what I am going to have to do is reread that particular section because quite frankly at this point—understanding how the

plan seems to work—I am not sure whether it is a generous plan or whether there are design gaps. Perhaps I will review it and come back to it at some point in the future.

Mr Kormos: I have two questions, and one is on this matter of sabbaticals. How difficult is it? I guess what I have got in mind is what I know some teachers are entitled to do; that is, reduce their income by 20 per cent and take their fifth year off with that 80 per cent pay. How difficult is it—I presume it is not very difficult—to develop that kind of formula? Do you have any ideas why that was never considered by the committee as an alternative to the sabbatical question?

Mr Thomas: That is a good question. I was not present at the Henderson report hearings; Mr French was. I know he is going to have an opportunity to reply.

The Chairman: I think that is an unfair question of people who are on the staff.

Mr Kormos: No, because the thrust of the question—

The Chairman: If he feels comfortable with answering it—

Mr Kormos: Wait a minute. The thrust of the question was not so much why it was never considered—I guess other than why the government would not have proposed that to the committee—I am assuming and am looking for confirmation that that is not that difficult a thing to organize, structure and put into motion—from the point of view of what these people do for their living.

The Chairman: I know they are not looking for a policy, and I do not think you are.

Mr Kormos: He knows what I am asking.

Mr Thomas: With respect to why it was not discussed with the Henderson committee, as I say, I do not know; I was not there.

With respect to how easy it is to implement one of these four-out-of-five plans, we are currently looking at that as a possibility within the Ontario government, and there are certainly problems in implementation.

I might also indicate that that is an interesting point about the four-out-of-five plan. As I indicated earlier, the other issue is that there is certainly a relationship—and I recognize that the report suggests that one ought not to have a relationship; but the fact is that there is one—between judges' benefits and those of the Ontario public service. Many of the OPS benefits arise by virtue of collective bargaining between the Ontario Public Service Employees Union and the government and get transferred into the management group and the executive group; then they show up in regulation.

There is an issue there, by the way, as to the precedent-setting nature of moving very far off the mark with respect to the benefits side of the judges' plan.

1710

Mr Kormos: The second question—maybe we should ask Mr French that.

The Chairman: He will be coming back.

Mr Kormos: The second question is this whole matter—I am wondering if there are any scenarios wherein a provincial judge would also be a retired public servant. I think it is called double-dipping. I think there was a crown attorney, a very old crown attorney, who was just appointed a judge. It surprised me because he was so old.

The Chairman: I think Judge Takach would be upset—if that is who you are talking about—with your comment that he is an old crown attorney.

Mr Kormos: This is a very, very recent appointment, or at least a rumoured one—real old.

Mr McGuinty: How old?

Mr Kormos: Real old—two or three years away from retirement.

Anyway, is there a scenario where a person that old would be getting a public service pension and then earning a judge's salary? I am not concerned about people collecting two pensions simultaneously, but I am concerned about people collecting a judge's salary and collecting their provincial pension at the same time, which is repugnant to most taxpayers.

The Chairman: I am glad you qualified that, because you would not want to cut off your future possibilities.

Mr Kormos: Who knows what the future holds in that regard.

Mr Kanter: Hope springs eternal.

Mr Kormos: It is repugnant to most people, the fact that somebody is collecting a retirement pension while earning a salary as compared to collecting two pensions. Is that scenario possible? Is it possible that a real old crown attorney would—

The Chairman: Would you like to qualify what "old" is? As I get older, I do not think 65 is all that old.

Mr Kormos: Younger than you but older than me.

Is there a scenario wherein that could happen?

Mr Thomas: I do not know the answer to that question. Mr Norris, do you know of situations?

Mr Norris: I know this situation, Mr Kormos—

Mr Mahoney: A real old crown attorney?

Mr Norris: A real old crown attorney. He is receiving a judge's salary only. He will not receive the public service superannuation fund pension until after he retires.

Mr Kormos: And that is going to be with anybody who is civil service or public service?

Mr Norris: I cannot speak to the PSSF design. That is not my responsibility. The judges' pension only comes into play after the judges retire. I would have to defer to my colleague, who knows about the PSSF. I believe there is a clause, however, that prevents payment of the PSSF pension to someone who is in receipt of money from the Ontario taxpayer.

The Chairman: Good grief.

Mr Kormos: Can we find about that?

The Chairman: Yes, I think we should. I think we should canvass that.

Mr Kormos: And just by word of warning, I do not think any retired Liberal members who collect their pensions, then seek and get appointments, should be entitled to their full—

The Chairman: Now, now, this is nonpartisan, Mr Kormos. I want to keep it on a high plane.

Mr Kormos: No, but it is unlikely at this point anybody other than Liberal members would become appointed to the bench.

The Chairman: Were you looking for an answer to that?

Mr Kormos: Yes, please.

Ms Clark: It is called re-employment. What happens with re-employment is, you continue to receive your pension and you get your salary. As soon as you get to the point where you get your last year's salary where you were employed by the government, you no longer receive pension payments above that amount. So you, in fact, are capped at your final salary. What it means is, if your final salary was \$50,000 and your pension entitlement was \$30,000, for example, you then get a job where you make \$20,000, that is fine, because \$30,000 and \$20,000 is \$50,000.

Mr Kormos: All right. What if you get a job that pays \$105,000?

Ms Clark: You are capped. You cannot get any pension payments.

Mr Kormos: Good. Thank you.

Ms Clark: That is the Public Service Superannuation Act. Other pension plans treat their re-employment differently.

The Chairman: Just so we understand that in terms of what Mr Kormos was asking, let's say, for instance, an elected member—and he has put it that way—

Mr Offer: It's hypothetical.

The Chairman: Yes, of course it is hypothetical.

Interjections.

The Chairman: If that is an endorsation, okay.

If an elected person were to qualify for a pension and be appointed to the bench, are you saying that the pension he had qualified for would not be paid to him?

Ms Clark: I am speaking for the public service superannuation plan. You are speaking for the Legislative Assembly retirement allowances plan; it is a different plan.

The Chairman: That is what I thought Mr Kormos was asking. He was asking about a crown attorney—

Ms Clark: A crown attorney would be the public service superannuation plan.

The Chairman: Okay. Any further questions?

Mr Kormos: No. She did not answer yours.

The Chairman: I was misinterpreting what you were saying. So I do not need an answer to my question. I can get it afterwards.

Ms Clark: I can answer it now.

Mr Mahoney: We may not want to hear it.

Ms Clark: There is no similar provision in the LARA account; so you could get a pension plus you could get a salary.

Mr Polsinelli: You can double-dip.

Mr Kormos: Of the 200 or more judges right now who are receiving provincial pensions of whatever ilk, how many are also receiving judges' salaries and will now be receiving the \$105,000? Are there any?

Ms Clark: I cannot answer that. I do not know.

Mr Kormos: Would you find out, please?

The Chairman: Any further questions of the presenters? Or shall we have Mr French now come back and do his final close to the jury or maybe answer your questions?

We appreciate your coming forward and giving us this information. We will ask Mr French to come forward and perhaps respond to some of those comments which you have made.

Mr French: I have asked Mr Chalmers to join me again and assist me with respect to some of the matters.

I listened with interest to the comments of Mr Thomas, and I was appreciative of the opportunity of reviewing the background notes that he and his colleagues in Management Board prepared. I would like to respond to those notes and to some of what Mr Thomas and his colleagues said.

Some of what I want to say at the outset concerns the process we are in or concerns conceptual issues. I want it clearly understood at the outset that

in making these comments, I am not shooting the messenger. I am not critical of the staff of Management Board. As I say, I was appreciative of receiving the information they prepared.

But from a process point of view or from a conceptual point of view, I am concerned that Management Board has chosen to come forward before the standing committee on administration of justice to resubmit, reargue and place before you again some of the facts that were already submitted, already argued and already in effect adjudicated on by the Henderson committee.

Mr Polsinelli: Could you be specific?

Mr French: I think specifically of almost the whole of the information contained within the background notes. I think specifically, for example, of the costing estimates and some of the projections.

Mr Polsinelli: Surely you are not suggesting that this committee should make its decisions without the costing analysis of the recommendations?

1720

Mr French: The other side of the coin is, where should that information be considered? I cannot at this moment resolve the dichotomy between the right of this committee to receive whatever information it needs in order to make its decision with respect to this report. That is a right that you have; it is a right that your electors expect you to discharge independently and properly on the facts before you. I acknowledge that.

On the other hand, it must be understood that the government appeared before the Ontario Provincial Courts Committee throughout many days of hearing, submitted volume after volume of information, as did the judges, and presented argument through counsel both orally and, primarily, through written argument. They submitted much of this information before the committee and it was considered before the committee and the committee passed judgement on it. The committee said, "That is fine. We have heard your case, and having done so, this is what we think. This is what we recommend."

That is in effect what the Henderson committee has done. It just concerns me that there is something, in a sense, unholy about the process, in that having had its case judged, it now comes before the justice committee and says: "Here is our case again. Would you look at it again?" Then when this committee is finished, it goes before cabinet and in effect has yet the last kick at the can in terms of assessing its own case.

I raise this issue, Mr Polsinelli, because the judges are very much concerned with process. It is something I touched on yesterday. It is something I mentioned yesterday. I simply place it before you as something that concerns me.

It seems to me Management Board has changed those who had carriage of this issue before the Henderson committee. It has substituted for those who dealt with the issue and placed new individuals in charge of the matter, for some understandable reasons: I do not say that ought not to have been done, because there are different perspectives being brought to bear at this time rather than at the committee stage, but nevertheless there is a certain matter of fairness that concerns me in this particular process, that that information be now raised again as if to be argued again, heard again, tried again, before you.

Mr Polsinelli: I hate to interject, but it seems to me you are striking at the very heart of whether or not this report should be before the committee. My understanding is that as a part of the letter of intent signed between the Attorney General and the provincial court judges, it specifically indicated that this report should be referred to us, that it should go to the Legislature and be referred specifically to this committee. My understanding also is that was at the request of the provincial court judges. Am I incorrect in that understanding?

Mr French: No, you are correct, Mr Polsinelli.

Mr Polsinelli: Then, Mr French, I do not understand what your point is.

Mr French: I am responding to something that I think all members of this committee will join with me in being concerned about, and that is an orderly process to resolve financial differences that exist between the provincial court judges and the government of Ontario. That process is in midpoint. The government has acted, in part, by way of a digression from the agreed-upon process in terms of its announcement with respect to salaries. The government has now brought before the committee a substantial volume of information that is dependent in very large part on assumptions, theories and a variety of variables that you cannot identify, that you cannot be definite about and that you cannot properly judge.

Mr Polsinelli: Would you, sir, have the resources to do that? Quite frankly, if the facts that are before us from Management Board are incorrect or are based on assumptions that I am sure I cannot detect, I would appreciate having that information before us so that in analysing its facts and figures, I can take into consideration those assumptions it has made that are not before us.

Mr French: In order to do that kind of analysis, I would have to know all of the assumptions that were made by the representatives of the government in order to generate these figures. I do not know all of those assumptions. I should also say that to some extent it results a little bit in chasing one's tail, because they are to a very large extent assumptions. There is a lack of hard-core, empirical fact that one can generate in order to cost some of the data, particularly in the area of pensions.

This issue was joined by the government and the judges before the Henderson committee. The only point I am making is that it concerns me that this issue is again being raised by the government before this committee. I am merely putting it before you as an expression of concern with respect to the process.

Mr Polsinelli: I appreciate that, but I must also point out that if this information had not been placed before us, as a member of this committee, I would have requested that this information be placed before us. I disagree with you in terms of whether or not we should be looking at this or should have requested this. But let's not take the balance of the afternoon discussing whether I am right or you are right or they are right; maybe we are all right.

Mr Mahoney: In fairness, there is an issue of process that I am not comfortable with and I would like, not necessarily the balance of the afternoon, but a few minutes to understand Mr Hampton.

My understanding is that you participated very extensively in the preparation of this report and in the hearings. Are you suggesting that it is—

The Chairman: Mr Mahoney, could you just sit a little forward?

Mr Mahoney: Sorry. Are you suggesting, Mr French, that in some way this committee should simply adopt all of the recommendations that are in this report without receiving any additional information, either from you or from the staff of Management Board of Cabinet?

Mr French: I think there are perhaps three things that have to be distinguished. First of all, my submission is yes, I urge you to put this—

Mr Mahoney: All of them?

Mr French: —report before cabinet and ask that it be adopted. That is my submission. You may disagree with that, but nevertheless that is my submission.

In terms of the information you wish, I think it would be fallacious of me to try to suggest you are not entitled to request whatever information you want in order to assist you in bringing your judgement to bear with respect to this report.

With respect to the third aspect of what you say, however, it is there that I express some concern. The government has raised all this before you and I am simply saying that this concerns me somewhat. Since the government raised all this before the committee, the judges and the government joined issue with respect to these matters before the committee and dealt with them, in part, on an evidentiary basis before the committee, and the committee passed its judgement.

If, as Mr Polsinelli says or as you say, you would have asked these same questions and would have gone through 100, 200, 500 or five days of questions, I cannot realistically say that is not your right as a member. I am making the distinction from a conceptual process point of view. I am just a little surprised that the government, on its initiative, through its representative, puts all these matters in issue before you again.

I suppose it is the point of inception. Had you raised these matters, perhaps I would have been less concerned than with the fact that the government representatives raised these matters.

Mr Mahoney: I guess I understood somewhat that your client group were the ones interested in—because they were unhappy with the ultimate decision of Management Board, they wanted some further discussion of the recommendations here to see if there could not be some recommendation from this committee to Management Board or the Legislature to alter that decision.

I thought we were here really with some sense that both sides wanted this committee independently to review the status quo of the announcement by the Chairman of Management Board (Mr Elston) and these recommendations, but clearly not to go through 100 or 200 days of hearings on the matter, since that has already been done. I thought our job was to decide with everyone here whether or not we feel the decision that has been made is fair.

1730

The Chairman: Before we continue, could we be perfectly clear on what 7 says? It says, "Following receipt of a report of the committee and its tabling and consideration by the standing committee on the administration of justice," and then it goes on to say what would happen. Clearly, if there is any function in its being here, it is for the consideration of this committee.

I just would like to be clear, Mr French, how you interpret "consideration." What are we supposed to be doing, if not considering the report plus any evidence that either was not presented or we were not there to hear presented? I note, going through the report, there are a number of areas where—I cannot put my finger on them at the moment—there is actually a statement by the people on the Henderson committee where they say there was no evidence to support that. I think the pension area was one of the significant areas where there was no evidence presented by either side, in an actuarial sense, to support some of the recommendations.

I said at the outset of this that one of the things I had difficulty getting my head around was the pension portions of it. I think that is the reason we have these people here. It is a very delicate situation, because I know what you are saying and I think we all do, that this process has to have some meaning to it, but I ask you, what does consideration mean if it does not mean to consider the report plus anything that will be helpful to the committee to make a determination?

Mr French: Just to respond very briefly on two things, first of all, with respect to the question of cost, it was a matter of the competing actuarial assumptions that were before the committee in large part. I will address that specifically when I address the document prepared by Management Board of Cabinet.

To address the procedural or conceptual issues, "consider" obviously has its ordinary definition, and the members of this committee, by agreement, are asked to look at, evaluate, assess, critique or do whatever it is they see fit with respect to the Henderson report as it works its way back to cabinet. Yesterday we discussed in part why that was sought by the government and the judges and how it seemed to work in Ottawa.

I think I have made my point with respect to the process issue and I do not know that I can assist you further on it. If my point is not clear or if there is something more that I can say with respect to it, I am happy to assist, but otherwise I propose to go and deal with one other—

The Chairman: Mr Hampton, do you have a difficulty with that?

Mr Hampton: I have no difficulty with it, but I think a distinction has to be made here. We as a committee can ask for whatever we want in the way of information, but I think what we are after is trying to work out a system whereby judges' salaries, allowances and so on can be dealt with in a way that does not lead to five years of haranguing every time the issue comes up.

If what we are after is a system, above and beyond what we may want to look at, I think there is something bordering on the improper in the government trying to come here and argue its case a second time. They have already had a chance to argue their case before the committee. Now to come and try to argue the case a second time before this committee says, "Why bother having a provincial courts committee?"

Mr Mahoney: What about having this committee?

Mr Polsinelli: Why should we look at the report at all?

Mr Hampton: I thought I had the floor, Mr Chairman.

The Chairman: Mr Hampton has the floor. It may be helpful that at pages 123 and 124, I find exactly what I was looking for. They talk about the costs of their recommendation. At the top of page 124, after hearing both sides, government and the provincial court judges representatives, they simply state: "We ourselves are not qualified to choose between these conflicting assumptions. And it is impossible to predict with confidence what effects the adoption of our recommendations would have on judges' retirement behaviour." They were talking about actuarial practice.

I do not know where that leaves us, Mr French. I have some concern on what Mr Hampton says, that maybe we are allowing it to be argued again, but if there was no reliable determination that could be made by the Henderson commission, maybe we have to make it. I do not know.

Mr Hampton still has the floor, Mr Offer. Then I will turn it over to you.

Mr Hampton: Perhaps the way this issue was originally framed by the government and the provincial court judges needs to be looked at again. But if we are going to get involved in a situation where the parties come in good faith before a committee that was appointed in good faith, they make their arguments and then the committee sits and deliberates for quite a long time and produces a fairly lengthy report replete with all sorts of references to cases and things that have gone on before, and we are going to come here and second-guess it, to me this is an absurd process and I would not blame the judges if they went away from it having no faith.

Mr Polsinelli: They requested it.

Mr Hampton: I just want to make a comment on something else. This committee, as a matter of fact, was asked not more than a month ago to enter into deliberations about court security and the government would not turn over the study that was done on court security. So to suggest that we have the right, or we should demand, to see all this information a second time—I put that motion before this committee and members opposite voted against asking the Ministry of the Attorney General for that selfsame information, only on a slightly different issue.

I think we want to be careful here. If it is good process here to ask for everything to be argued again and to ask the government to make its case a second time, why was it not a good process a month ago on court security? I think we really should be concerned about the process. I find something not very good, in terms of process, with the government making its argument once before this independent committee and then coming here and trying to get that information considered again.

The Chairman: There is a small distinction between what we were doing on court security and what we do here every day. It is that a good deal of it is partisan. What we are trying to do here is that maybe this one time and perhaps never again, but this one time, we would approach it on a nonpartisan basis.

If we are to subject this to a partisan arrangement, I, for one, would have some difficulty chairing this committee. I think it has to be looked at in terms of us making a report based on the best understanding we have.

Mr Hampton: If I may reply to you, Mr Chairman, looking at this on a nonpartisan basis, I am not comfortable with the government already having one kick at the can in terms of going before this independently appointed committee, arguing its case and then coming to this committee and trying to argue its case over again.

If, after reading this report, we want certain specific information, maybe then the process should call for us to ask both sides, "Can you comment on this again for us?"

Mr Offer: That is exactly what we did.

Mr Polsinelli: That is what we are doing.

The Chairman: Just a second.

Mr Polsinelli: That is what we did.

The Chairman: Mr Hampton has the floor.

Mr Polsinelli: That is what this committee decided to do.

The Chairman: Mr Polsinelli, control yourself.

Mr Hampton: I do not think we acted in a nonpartisan way, Mr Polsinelli.

Mr Polsinelli: This committee decided last week to invite Mr French and Management Board to make a presentation.

The Chairman: Are you relinquishing the floor to him?

Mr Hampton: No.

The Chairman: Well, you are. Okay.

Mr Hampton: You are the chairman. I expect—

The Chairman: Look, if you do not object, I am—

Mr Offer: I think what we are trying to do in this committee is two things: Number one, if as it turns out, some process for future evaluation of these types of issues evolves, then it will, but that is something this committee is going to have to grapple with. The other issue we are going to have to determine is the specific recommendations contained within this particular report.

All we are doing in this exercise is saying that some of these recommendations may carry with them some financial implications. I think it is surely within the discretion of this committee to ask for a fleshing out of that financial impact.

1740

We had the opportunity of hearing from Mr French yesterday. We had the opportunity of hearing from Management Board today, whereby we asked Management Board for further information dealing with the financial implication.

We have again requested Mr French to carry on in terms of what he has heard from Management Board. I would think that maybe we should give Mr French the opportunity to do that. If it turns out that the request made by this committee of Mr French in terms of financial implication is made and Mr French is given the opportunity of providing that information, so be it. That is what is called a full analysis of a particular issue. That is why we were given this report, and to do anything less is to do a disservice to the Henderson committee. So let's go on with the thing.

Mr Hampton: If I may, I did not hear Mr French yesterday repeat at length all of the submissions that the provincial court judges may or may not make to this committee. What I heard him do was go through this actual report and highlight, and some of the things that were highlighted were not financial information at all; they were information about principles and process, how we might want to comment upon the process, how we might want to comment upon maintaining judicial independence, how we might want to comment upon judges being treated as professionals.

Mr Offer: Then why would you not let Mr French continue?

The Chairman: Let Mr Hampton finish.

Mr Hampton: I did not see Mr French come forward and try to re-argue, point by point, the provincial court judges' case. What I have seen here today is basically the government trying to re-argue its case again.

If the government wanted to come and say: "Look, here is the report. We have some comments. We ask you to look carefully at what you consider to be judicial independence. We ask you to look carefully at what may or may not be included in judges being treated as professionals. Yes, we have some information, if you wish, on the financial implications of this," I would have had no problem with that.

But I do have a problem, and I think we are headed down the wrong road in terms of getting a process that will be accepted by the judges if every time this report is put through, the government is going to come to this committee and try to re-argue the case. To me, it makes no difference if we are going to waste that amount of time, but it is an awful way to arrive at public policy and it is an awful way to—

Mr Polsinelli: That is right. It is totally irresponsible to look at the cost.

The Chairman: Just a second now. We are talking about time. We have Mr French here, unless you want him back here again on Tuesday. I am sure he is not too terribly anxious about coming here on Tuesday. Let's ask the questions and then we can discuss this, what is happening, afterwards. Mr French, would you like to continue?

Mr French: In dealing with the matter of cost, I would like to refer very briefly to the conclusion of the Henderson committee at pages 123 and

124. Then I intend to leave this point unless I can be of further assistance to the members. About the fifth-last line of the text, at page 123, the committee, having heard argument and submissions, having received vast quantities of material, having heard from an actuary on behalf of the judges and having had the opportunity to consult with the chief government actuary, said as follows:

"We have attempted no estimation of the additional cost to the government of the pension plan enhancements we have recommended. Any such estimation would be anchored to the actuarial assumptions on which it was based. We were confronted in argument with two conflicting sets of such assumptions: the rather cautious assumptions used by Ontario government actuaries, and the somewhat less cautious assumptions proposed by the actuary who gave evidence for the judges' associations. Each admitted that the other's assumptions came within the bounds of generally accepted actuarial practice. Neither side claimed that its assumptions had any empirical foundation in the actual retirement behaviour or mortality rates of provincial court judges. We ourselves are not qualified to choose between these conflicting assumptions. And it is impossible to predict with confidence what effects the adoption of our recommendations would have on judges' retirement behaviour."

The committee then went on to put its considerations with respect to the issue of expense in perspective.

If the committee, in its wisdom, is going to rehear the government's argument in those respects, I would like to have the opportunity to take instructions with respect to whether the judges would like to respond in kind.

I will tell you very frankly and honestly, I do not have the slightest desire, inclination or wish to do it. My advice to my clients would probably be not to partake, because you will sit here for four or five days listening to the very exciting evidence of actuaries dealing with assumptions that have no empirical fact. You will end up having to do exactly what the Henderson committee did at pages 123 and 124. I suggest you can probably do that without going through that—meaning no disrespect to actuaries—painful exercise. I leave that to you in your wisdom and I will abide by it and do whatever I need to do to assist you in your task.

I would like to respond to one final conceptual issue; that was the notion of indexing and whether to legislate indexing or not. That is a specific recommendation, but it was also discussed by representatives of Management Board from a conceptual point of view. The concern was that from the point of view of the government, it would be precedential, based on existing collective agreements and other collective bargaining procedures.

I point out to you that in the agreement that was entered into between cabinet and the provincial court judges, it was agreed that the Ontario Provincial Courts Committee would make a recommendation with respect to automatic adjustments to salary, and that would be in a prospective sense with a view to eventually being incorporated in legislation. So cabinet has already agreed to look at it. With respect to the individuals from Management Board, I do not think it appropriate to submit to you that it would be precedential to do it. Cabinet has already said it will look at it and it is up to cabinet to decide whether it wants to do it or not.

From a process point of view, at times I feel a little like John the Baptist wandering in the desert. I cannot impress upon the government enough and I cannot impress upon the members of this committee enough the importance

of ending this annual struggle between provincial court judges and the government. It has to end. It is doing damage to the fabric of the administration of justice in this province and it cannot long continue. It must end. It seems to me the only way in which it can end is if there are legislated automatic increases to salary.

I turn now to the notes themselves and I would like to deal with them very quickly. Looking at page 2 of the notes, under the heading "Basic Features of the Judges' Pension Plan," it states that the plan was designed to recognize that judges are appointed later in their working lives; we agree with that. The design of this plan was therefore based on a full working career; in other words, the theory of the initial pension plan in 1984, in part, the submissions of the judges before the Henderson committee and the response of the Henderson committee, I believe, were on the basis of viewing a judge within the context of a full working career as opposed to viewing a judge with 10, 12 or 15 years of service.

Turning to page 3, in terms of the comparison to the public service plan, I have a few comments. In terms of item 1, under the heading "Costs:" the relevant per cents are to compare seven per cent to 5.57 per cent. So there is a relevancy in regard to contribution by a member in either plan.

The accrual rate has no bearing whatsoever on the judges' plan. As the representative of Management Board indicated, this is merely a notional presentation; it has no bearing in fact.

With respect to items 3 and 4 on this page, in terms of the commentary they are true, but I think it important to bear in mind that the evidence presented before the Ontario Provincial Courts Committee was that even if you compare the judicial pension plan with a comparable individual under the Ontario public service plan, the judicial plan is still deficient. In other words, if you take a working life career, assume 35 years, a person under the Ontario government plan with that assumed 35 years of employment is still going to be better off under that plan than the person on a comparable basis, on the basis of the numbers used before the Henderson committee.

1750

Mr. Polsinelli: I hate to interject when you are doing this, but I think this is a very important item. That is a point I am not totally satisfied with, whether it is deficient or not. Looking at the nuts and bolts of the plan, it appears to be deficient; then, with the other things that were explained in terms of a judge who is 65 years old, the sickness benefit package and those other things, when you look at it from the principle of a total compensation system, it appears to come out slightly differently. I take it you were following when I was asking these questions of Management Board earlier. I am going to personally have to review those sections in the report dealing with the sickness benefits and the pension plan.

The Chairman: What you are saying is that a sick judge has a good pension. One who does not get sick may or may not have.

Mr Polsinelli: It appears that if the judge does not fulfil the 80 factor and voluntarily leaves the bench at 65, then he is not entitled to anything, but if he leaves the bench for a whole host of other reasons, he ends up getting more than the judge who fulfils the 80 factor and leaves at 65, because he comes in at 55 per cent.

As I say, when we deal with this item again next week, perhaps you could bring some further information dealing with the total package—the pension plan, the sickness benefits—and look at it as a total package. I think Management Board is also going to be looking at that aspect, but we can again look at the question about whether it is deficient or whether perhaps it is not.

Mr French: There are two points with respect to the focus I offer at this juncture, with respect to this page of this document. First, it is my submission that notwithstanding this presentation on this particular page, the conclusion of the Henderson committee is that there is equivalence between the two plans just on the pension payout. Ignoring sick leave, ignoring long-term disability, ignoring early retirement for whatever reason, ignoring all of those periphery issues with respect to a pension package and looking strictly at the benefit available on retirement, the plans are roughly equivalent with the added benefit the Henderson committee has recommended. It should not be understood that the plan available for the judges offers something that is fantastic or that offers a kind of payout for the member or the—

Mr Polsinelli: Nor am I suggesting that.

Mr French: That is the only point on this page. The other issues deal with looking at the package as a whole. Perhaps we could go through this. I do not know that one can, from where I sit, in any event, constructively attempt to compare the individual features of a plan available for a member in the civil service with the features available for a member of the judiciary. Again, suffice it to say, from my perspective there is general equivalence with respect to most of the recommendations.

Mr Polsinelli: I only wanted to highlight that, because that is one area I am particularly concerned with. I thought that if perhaps by the time next week rolled around you wanted to make some further submissions, I personally would appreciate them. If not, that is fine also.

Mr French: I should say that in your appreciation of the plan as a whole and in terms of a member leaving the judiciary—I am not sure if it had been mentioned to you—the plan does have an actuarial reduction based on early retirement and the plan also does have the notion of a deferred pension, in addition to the refund of contributions with earned interest. There are other features of retirement that are available to a judge who is withdrawing from service.

With respect to page 4 of the document, it is my submission that it is essentially a red herring. The fact that there is a salary increase has no bearing whatsoever on the provision of a pension as a percentage of pay. While it shows increased dollars in terms of a pension payout, that does not change the fact that the pension is nevertheless a continuing percentage of pay. I think that has to be borne in mind in terms of looking at this particular page.

Furthermore, the statement two thirds of the way down that the government contribution increases from 15 per cent of salaries to 21 per cent of salaries is just one way of looking at costs. This was the point that was dealt with extensively before the Henderson committee, because there is another way of looking at costs, which is actuarially proper, which leads to the conclusion that there is no increase in cost.

That was the conclusion the Henderson committee came to, at the bottom of page 123 and at the top of page 124, on this precise point. In effect, they

said: "We're talking about assumptions here. We have no empirical data; we're talking about assumptions. Each actuary acknowledges that the other's assumptions are within the realm of appropriate actuarial assumptions."

With respect to page 5 of the document, again I submit that the whole of this page is a red herring. The issue with which the Henderson committee was concerned and with which cabinet eventually has to be concerned is: What is a reasonable pension for provincial court judges? The question is not: How you provide the pension? The question is: What is a reasonable pension? Once you have determined what is a reasonable pension, then you have to determine how to provide it.

I have great difficulty seeing Revenue Canada sweeping aside the pension plan that is available for federally appointed judges, the plan that is available for members of the Legislative Assembly of this province and every other province and the Parliament of Canada, every municipality within Canada and a variety of other comparable pensions. I submit, be not deterred by what Revenue Canada may or may not do. The point is: What is a reasonable pension?

With respect to page 6 of this document, there is so much that may be said about this page that it piques the imagination. It is true that this is a volatile year. It is a volatile year for a lot of other reasons than simply the matter of pension. I think it is a volatile year for the attempt by the government and the judges to resolve these financial matters on an orderly basis. The matter of pension should not be considered within the notion that this is a volatile year for pensions. It is a question of what a reasonable pension is.

If one wants to look at all of these comparisons, the government of Ontario, in terms of its provincial court—Perhaps Mr Arnott could assist me here. I have some sheets that may be of interest to the members.

Mr Polsinelli: If I could interject: We, as members of the committee, took up about 20 minutes of Mr French's time. If Mr French would agree, perhaps he could continue at the next sitting of this committee, continue his presentation and finish his presentation. Or would you rather, as there are only a few minutes left, complete it today?

Mr French: I am in your hands. If I may just conclude my comments with respect to this handout, and then if you wish to adjourn and have me back, I shall do as you wish.

Mr Polsinelli: I would suggest that if you have further responses, I would like to hear from you again.

Mr Chairman: Mr McGuinty had his hand up, but perhaps we could let Mr French finish with this item.

Mr French: In terms of the pension requirement, the provincial court of Ontario, if you bring in the Provincial Offences Act cases, deals with about 97 per cent of all the criminal cases in the province; it deals with about 75 per cent of all the family cases in the province; and you can play with statistics till the cows come home, but the civil division deals with about 70 per cent of all the claims in the province. This is the court that serves the vast amount of people.

What the government is competing with to serve those people as best it possibly can is the members who are appointed to the district court and to the

Supreme Court of Ontario. If we are going to compare pensions, let's not just compare them with what is available in the public service. Why do we not look at what is available for a member of the district court?

1800

You can see very readily, based on this graph, that right now a judge in the district court is entitled to a pension that is twice that available to a judge in the provincial court, and even with the proposal, based on 45 per cent of the \$105,000, the payout or the amount of the pension is dramatically different.

I do not know that putting so many numbers on a page assists us all that much when we look at what it is the government has to compete with in terms of trying to attract highly qualified men and women to the provincial court of this province.

Mr Polsinelli: The proposal was 55 per cent, was it not?

Mr. French: Yes. This just shows 45 per cent of the increase, 45 per cent based on the increased salary, which is the salary the minister has announced that Management Board intends to proceed with.

I might add that when we talk about this, you have to remember that if the proposals of the Attorney General with respect to court reform are eventually implemented, it is these same people who will eventually be in that Ontario court. That is what you are looking at in terms of the pension benefit that is available to the members of the district court. I did not bother to put down the Supreme Court, but of course there is a correspondingly greater difference.

Those were my comments on that point, Mr Chairman. Do you wish me to—

The Chairman: Thank you, Mr. French. This might be a good time to close the subject. I think Mr McGuinty is going to say something.

Mr McGuinty: I have one brief comment, not for discussion or even reaction, but perhaps to consider before we meet next time.

I find myself in great sympathy with Mr. French's statement. I am not very much concerned about getting involved in whether or not a judge is paid 26 cents a mile, as we are paid in the Legislature, or 27.5 cents a mile, as I am paid for mileage when I work for my minister. Really, I do not think \$7 is enough for breakfast, but I am not going to question that and argue it here, nor whether the incidental allowance should be carried over to the next year.

As an Ottawa Valley Irishman, I am not even going to question the fact that "spouse" as defined here could be a Lesbian or homosexual relationship. I will not raise that point.

Mr Mahoney: I am glad you did not.

Mr McGuinty: I think what we have to do is extract here and focus on a couple of basic principles.

First, the fact is that judges are a most important part of our whole judicial process. Second, as Mr. French has said, this has been a recurring, seasonal litany of laments which should be wrapped up once and for all.

A few other basic points: There is a good reference here somewhere. In salary administration, of which I had considerable experience as a professional, by analysis and comparison you can assign factors and then by a point comparison system evaluate jobs, compare them and see what they are worth, but judges are difficult to compare with others. They have a kind of unique role.

First, at midstage in their career, they accept the appointment to the bench, and this in itself incurs on their behalf considerable financial sacrifice. They must be independent, and the independence of the judiciary places obligations on the government. The salary must be adequate to attract candidates, and they must be treated as professionals.

I am completely unwilling to get bogged down here on the adequate amount for a breakfast or 26 or 27 cents per kilometre if they drive their cars.

Also, I would respectfully remind you that the people on this committee, some of whom I know you are familiar with—I have known Gordon Henderson, for example, for many years. I am not suggesting that we accept the findings simply on the basis of the impeccable reputation of the committee members, but these recommendations have been the considered judgement, the result of findings, hearings, briefs and involved discussion.

As one who is mathematically handicapped, I am certainly not capable of getting involved in the evaluation or the actuarial computations here.

The Chairman: Mr. McGuinty, having said that, I think we will allow those words to float around for the next eight days.

Mr McGuinty: Do not let them float around; let them sink in.

The Chairman: Sometimes they have to float around before they sink in, I guess. We stand adjourned until after routine proceedings on Tuesday.

The committee adjourned at 1805.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
TUESDAY, 23 MAY 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Association of Provincial Criminal Court Judges:

French, Paul J., Legal Counsel

From the Wyatt Co:

Brown, Martin, Actuary

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, 23 May 1989

The committee met at 1555 in room 228.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
(continued)

The Chairman: I recognize a quorum.

Mr Kormos: I should say I am sorry I am late.

The Chairman: I understand.

Mr Kormos: Very briefly.

The Chairman: Well, do not apologize to me. I am here to serve.

Mr Kormos: I am not apologizing to you. I would not think of apologizing to you.

The Chairman: Thank you. I am glad to hear that.

Mr Kormos: I am apologizing to Mr French and the actuary, etc.

The Chairman: All and sundry.

Mr Kormos: Yes, the whole kit and caboodle.

The Chairman: Now, when last we were at this, we had heard from the Management Board of Cabinet, human resources secretariat. I do not know whether we had heard from the Ministry of the Attorney General. Had we?

Clerk of the Committee: Yes.

The Chairman: Okay. We now have Mr French who is going to come back and address us. Mr French, would you like to come forward? I understand that Mr French has with him Martin Brown, who is an actuary with the Wyatt Co. Do I have unanimous consent that Mr Brown might provide some evidence to us?

Mr Kanter: Yes.

The Chairman: Hearing no contrary items, perhaps Mr Brown wants to come forward. Mr. French.

Mr French: I have had the opportunity to read the transcript of our last attendance before you, and having considered the nature of the comments of the representatives of Management Board and myself and the questions that were asked by the members of the committee, I thought that it would be helpful to make available to you, as a resource person, the individual who gave evidence before the Ontario Provincial Courts Committee with respect to the pension plan for provincial court judges. That was Martin Brown of the Wyatt Co, certainly a nationally accepted expert in the field of pensions, responsible for the management of some of the largest pension plans in Canada.

Mr Brown has that unique ability of taking a very complex area and reducing it to terms what can be easily understood, so I thought, with your leave, that I would turn the proceedings over to Mr Brown in order that he might discuss with you the notion of the pension plan and the design features of the judicial pension plan. If you are in agreement, perhaps we could do that.

The Chairman: Is there unanimous consent that is the way we will proceed? All right.

Mr French: Mr Brown has some documents that can be shown by way of an overhead projector. I had taken the liberty of mentioning this to Mr Arnott earlier today and he has arranged the appropriate facilities to permit that to be done.

The Chairman: Okay, I guess we need the lights out. Would any members would like to come up here or take another seat elsewhere?

Mr Polsinelli: Perhaps, Mr Chairman, you would like to come here.

The Chairman: I can see it. I have slanted eyes. I can see around corners, in fact. It is from watching television while the rest of the family have the set directed towards them.

1600

Mr Brown: All right, thank you very much. I am just going to give a little presentation, and as I go through, I would be pleased to field any questions that you have, with your permission, Mr Chairman. I sometimes find that if you bottle up a question, then it becomes more difficult to ask at the end of the session.

What I would like to do is run through a very brief presentation I gave in front of the Henderson committee which was designed to assist the committee in understanding the subject of pensions. As we all know, pensions are a pretty complicated and misunderstood subject, so I would like to try to bring some common understanding to the issue. What I would like to talk about are some issues that go into the making up of pensions.

I did take the liberty of preparing some little booklets, and you can make some notes on these as you go through, if you wish. I propose to make a few comments about government pensions, in the form of the Canada pension plan and old age security, some comments about what I regard as being public service pension policy, some comments about the provincial court judges plan and then to give you some examples and talk about any other factors that may come into the situation. You will note that this presentation was given almost a year ago, in June 1988, so the numbers are a little bit out of date, but I do not think it changes the basic conclusion at all.

First, a few words about the Canada pension plan: The Canada pension plan was introduced in 1966 and is essentially a contributory final average earnings pension plan. The fact that it is a government-sponsored plan does not really change that at all. It operates on the basis of an earnings cap called yearly maximum pensionable earnings. This is equivalent to the average industrial wage. For some time, the YMPE was being increased at the rate of 12.5 per cent, because it fell behind the average industrial wage, but it caught up last year and will now supposedly keep track with the average industrial wage. It is currently \$27,700 and is adjusted annually.

The pension benefit provided by the Canada pension plan for somebody with a full contributory record—that is, somebody who has contributed for at least 85 per cent of the time between 1965 and the date of cessation of contributions to the Canada pension plan—is 25 per cent of final average earnings, those final average earnings being calculated—in the case, at least, of the people we are talking about here—as 25 per cent of the average of the yearly maximum pensionable earnings in the three years coincident with and preceding the date of retirement, so that in the current situation the average earnings would be based upon one third of the sum of \$27,700 in 1989, \$26,500 in 1988 and \$25,900 for 1987.

The Canada pension plan is currently contributory: employees and employers make contributions at the rate of 2.1 per cent apiece. For many years, the plan ran at 1.8 per cent each, but commencing in 1987 the contributions started going up by 0.1 per cent per year and will, under current actuarial projections, hit about 7.6 per cent in total—that is, 3.8 per cent apiece—in about another 22 years time. However, the plan will be subject to actuarial review every five years, and I do expect the contributions to go up by somewhat more than what the government has currently told us. Other than that, it is a very simple plan, but I think a very basic understanding is essential to understanding public service pension policy and where the judges' pensions have come from.

Old age security is funded from general tax revenues. It is not funded out of specific contributions but is provided out of general tax revenues. There is a flat benefit which is based upon residency, and for anybody who commenced to earn a benefit after 1978 the benefit accrues over a 40-year period, the full benefit being payable at age 65 based on 40 years of residency with a pro rata amount for any lesser years of residency. Prior to 1978, the full pension became payable after 10 years of residency.

The current amount is \$3,910.44 a year and that amount is adjusted quarterly in accordance with increases in the consumer price index. That is the amount in the current second quarter of 1989.

I might make the point that old age security is generally not included in any consideration of pension philosophy. Because it is based on residency and funded out of general tax revenues, it is in fact generally not considered part of pension planning, to the extent that the Pension Benefits Act of Ontario prohibits a direct offset for old age security benefits.

I would like to make some comments now about what I regard as being "Public Service Pension Policy." There are 2,000 employers and 530,000 employees included in public service plans in Ontario. The major public service plans are the government's own plan, the teachers' superannuation fund, the Ontario municipal employees retirement system, the hospitals of Ontario pension plan, colleges of applied arts and technology, Workers' Compensation Board and Ontario Hydro, and comprise 1,800 employers and 490,000 employees. These seven big plans make up the bulk of the public service plans.

All of these plans provide the same basic formula and an indexed pension. The pension is based on two universally recognized factors that go into the calculation of pension benefits, that is, earnings and length of service.

The overall pension amount is calculated as two per cent of average earnings over a five-year period, the best five years of average earnings times credited service—that is, service that is recognized by the plan—up to

35 years, less an offset for Canada pension plan benefits; but, you will note, not an offset for old age security benefits.

As an example, the public service superannuation fund provides a pension of two per cent of final average earnings times service—that is up to 35 years—less, from age 65 onwards, 0.7 per cent of the average yearly maximum pensionable earnings times service. In the second case it is service from 1966 onwards, when the Canada pension plan came into effect. Do not worry too much about that little formula. I will explain the rationale behind that formula in a couple of slides.

I want to make the point, however, that for purposes of this plan a full career of 35 years is recognized and a target benefit is two per cent times service up to 35 years, or two per cent times 35 years for a full career employee, which is 70 per cent of final average earnings. In effect, the target benefit for a full career employee is 70 per cent of earnings.

It is generally considered that a replacement income ratio before taxes of 70 per cent of final average earnings, taking into account reduced expenditures after retirement, presumably when there are no children left to support, the mortgage has been paid off and so on and so forth, when there are no travelling expenses and no work clothes to buy, should more or less maintain the pre-retirement standard of living.

Just referring back to our public service pension plans, all of those seven plans that I mentioned require members to contribute. In the case of the public service superannuation plan, the current contribution rate is seven per cent less an allowance for Canada pension plan contributions, and of course you will all be aware of Mr Nixon's announcement that this contribution rate is to be increased to eight per cent effective 1 January 1990, in order to provide for better funding of the plan.

All plans allow early retirement without penalty in some situations. Some plans are more generous than others. But again, to cite the public service superannuation fund, the plan allows for full pension to be payable—it is not reduced for early retirement—on attainment of age 60 and completion of 20 years of service, or on a rule of 90 basis. What that means is when age and service add up to 90; for example, age 55 and completion of 35 years of service, or age 60 and completion of 30 years of service. Those two add up to 90 and that would allow for retirement on full pension.

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I might also make the point that all of the plans have survivor benefits on death, pre- or post-retirement, ranging from 50 per cent to 60 per cent of the benefit that is accrued, in the form of a pension payable to the survivor. In the case of the PSSF/PSSP, it is still a 50 per cent benefit, but for example in the case of the Ontario municipal employees retirement system or the hospitals of Ontario pension plan, there is a 60 per cent survivor benefit payable automatically.

I think it also worth making the point that out of those seven public service pension plans, only one is at present subject in full to Department of National Revenue limitations on pension benefit payments and that is the hospitals of Ontario pension plan, which has to restrict pensions payable to a certain maximum amount. The other six plans at present regard themselves as not being subject to Revenue Canada's maximum rules, because the plans are more or less set up under statute; whereas Revenue Canada maximum rules are

set up through a guideline, and the plans consider that their statutes override Revenue Canada's guidelines.

However, that will change. Revenue Canada and the Department of Finance have announced plans to bring in new pension policy rules which will make all plans subject to the maximum pension. This will have an impact, I am sure, but I feel it will not have an impact in practice on any of these plans, because they will all find some way of providing benefits in excess of the maximum pension. Incidentally, that applies to your own plan as well, gentlemen.

Let me come back to that funny little formula that I talked about. I want to just show you the rationale for it.

I talked about the target benefit for a full career employee as being 70 per cent of final average earnings including the Canada pension plan, but again, not including old age security. So we have the gross pension formula of two per cent times 35 times final average earnings, which is 70 per cent of final average earnings. The offset is calculated as 0.7 per cent of earnings up to the year's maximum pensionable earnings—up to this basic level of earnings that is covered by the Canada pension plan—times service from 1966. I put in 35 years here because this is how it will be in a mature environment. So 0.7 per cent times 35 is 24.5 per cent of the average yearly maximum pensionable earnings. I think you can compare the Canada pension plan benefit of 25 per cent of the average yearly maximum pensionable earnings, so the two are more or less identical.

So what we can say is that for a full career employee retiring, say, under the public service superannuation plan, the overall benefit, including CPP, will amount to 70 per cent of final average earnings.

The plan for provincial court judges provides a—

Mr Kanter: Yes, perhaps because this relates to general pensions rather than judges' pensions, if I may.

You mentioned several times full career employees and the fact that the public sector pensions are predicated on the assumption that someone will work 35 years for a public sector employer. Would you have any information on the average years of service for people who collect public service pensions? That is, would it be in fact close to 35 years or is it closer to 20 or 30? Would you have any idea, in terms of those who collect public service pensions, how many years of service they put in on average?

Mr Brown: No, as a matter of fact I do not have that information under the public service superannuation plan. Under some of the other public service plans, yes. It very much depends upon the nature of the plan or should I say the nature of the arrangement and the nature of the employees who participate.

For example, hospitals of Ontario pension plan in particular has a workforce which has a very high degree of mobility and turnover. The average service for somebody retiring there, I believe, is in the order of 15 or 20 years.

Mr Kanter: Just to complete that thought, if the average service were 15 years, for example, then it would be 15 times two per cent, or approximately 30 per cent of income, from that employment.

Mr Brown: That is correct.

The provincial court judges plan, as currently established, provides at age 65—which I am taking to be a reasonable reference point at this stage because the other public service plans have normal retirement age at 65, albeit with some generous early retirement provisions—a pension of 40 per cent of final earnings, not final average earnings, and also on top of the Canada pension plan.

There are two points here. First, the benefit is related to the final year of earnings. In fact, the pension is based on the current salary of a sitting court judge. Second, it is a stacked plan, as opposed to an integrated plan. Again, I propose to explain how that operates in an example.

The pension at age 65 is payable to a judge who has completed at least 15 years of service. There is a minimum requirement, on a rule-of-80 basis, such that provided the judge has attained age 65, a pension becomes payable when age and service add up to 80 years. The judges pension also increases at the rate of one per cent for each year past age 65 that they retire, up to an amount of 55 per cent at age 75.

The judges plan provides no early retirement benefit without a reduction applying. I have said "without penalty" and one can look at these things as being a penalty or a reduction, but nevertheless the judges cannot retire early without there being a reduction in the amount of the pension.

Mr Polsinelli: They can after they have completed 15 years of service, can't they?

Mr Brown: Yes, they can. They can retire after 15 years of service, but if it is before 65, there is a reduction in the pension. The judges contribute an amount, not necessarily to the pension plan. There is a basic contribution due of 5.57 per cent of earnings, and this can be directed, at the wish of the judge, either to the provision of pension benefits or to the provision of survivor benefits.

Please note that the current public service superannuation fund contribution rate is seven per cent, less an allowance for Canada pension plan contributions. In fact, the current contribution rate works out at about 5.5 per cent, which is very similar to the 5.57 per cent payable by the judges.

I understand that the judges have given their decision to contribute to the pension plan or the survivor benefits to add a certain degree of flexibility, because it allowed them to make some registered retirement savings plan contributions as well. One thing that might be said is that this will certainly be significantly changed when the new tax policy comes into effect, which will turn over the ability of all employees or plan members to make RRSP contributions as well as participate in a pension plan.

Mr Polsinelli: That 5.57 per cent, I understand, also covers the cost of group life insurance—

Mr Brown: Yes, it does.

Mr Polsinelli: —which is five times their income. That group life insurance is not a benefit under the public service superannuation fund or any other plan?

Mr Brown: That is correct.

Mr Polsinelli: So if the cost of the group life insurance were to be subtracted from the judges' contributions of 5.57 per cent, what would the percentage be?

Mr Brown: I have no idea, but I make the point that the judges could elect to have no contributions payable to survivor benefits and the total contribution paid to the pension benefit. What I am saying is that there is no effective cost to the survivor benefits, because the judges do not have to contribute towards them. They can contribute that amount directly to the pension plan and nothing to the survivor benefits. It is simply a tax-saving gimmick.

Mr Polsinelli: I would like to understand that a little bit further. My understanding, according to Management Board's presentation, is that the judges do not pay towards the cost of the pension, but rather what they pay is 5.57 per cent, representing one half of the cost of the survivor benefits and the group life insurance.

If we are trying to compare this with the public service superannuation plan, which includes a survivor benefits component, and the public servants pay seven per cent, then let's try to compare apples to apples. If we could eliminate the group life insurance component from this, at least we would have a more accurate reflection of what the judges' contributions towards their pension plan would be.

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Mr Brown: I agree. There is a difference and I think that is a factor that needs to be taken into account. I do not know, however, what public servants contribute towards their survivor benefits, if anything. Perhaps that is something that Management Board could—

Mr Polsinelli: Did you not indicate in your presentation just a while ago that survivor benefits were a component of the public service superannuation plan?

Mr Brown: That is the 60 per cent or 50 per cent pension benefit that arises out of the pension plan, which also arises out of the judges plan. There is in fact a 50 per cent survivor pension that arises out of the judges plan which is not directly related to the group insurance benefits.

Mr Polsinelli: But it is part of the public service superannuation plan, that survivor benefit.

Mr Brown: But in both cases it cannot be a 50 per cent pension survivor benefit which is exclusive of any group insurance benefits that are available, either to the judges or to the public servants.

Mr Polsinelli: I agree with that, but what I am asking then is if you exclude the group life insurance component from the 5.57 contributions, what does that percentage figure come to?

Mr Brown: I have no idea.

Mr Polsinelli: I think we need that figure in order to properly compare what the judges are contributing towards their pension plan.

Mr Brown: Yes. Again, however, I make the point that the judges could elect to contribute all of the 5.57 per cent to the pension plan and nothing to the survivor benefits.

Mr Polsinelli: I do not understand that. Why would they have that incentive? Why would they do that?

Mr Brown: I think we are getting involved in a—

The Chairman: You are mixing apples and oranges, are you not?

Mr Brown: I think it is a discussion that is sort of going nowhere.

Mr Polsinelli: I do not understand that election then, because if—

Mr Sterling: Could I try to interpret what I think Claudio is trying to get at? In an earlier part of your comments, you said seven per cent of the earnings of the public servant less an allowance for CPP.

Mr Brown: Right.

Mr Sterling: That was their contribution. We see on this one that we have a figure of 5.57 per cent. I think what Mr Polsinelli would like is to know what that figure is if you take out the group life insurance.

Mr Polsinelli: That is my question.

Mr Brown: I have no idea, but what I am saying is I do not think it is particularly relevant to the process.

Mr Polsinelli: You do not think it is relevant to the process.

Mr Brown: No.

The Chairman: With respect to the 5.7 per cent or whatever the percentage is, if I were in that category and I were to die, my widow would get five years of my earnings guaranteed, added on to the 50 per cent she would get that she is guaranteed. Is that right?

Mr Polsinelli: That is what the group life insurance is.

Mr Brown: Yes, the group life insurance plan provides, I believe, five times—

The Chairman: Five times earnings. So really there is no contribution at all.

Mr Sterling: Sure there is.

The Chairman: The contribution is towards the group life insurance that gives my widow five times the earnings, but that is lumped on top of the 50 per cent she would get anyway if I died.

Mr Brown: Perhaps Management Board can tell us. I do not know what the public servants contribute towards their group life benefits, if anything at all. But when I said I do not know that it is particularly relevant to the point I am making—it may be relevant to the process, but I do not know that it is particularly relevant to the point I am making—I am just trying to give

an indication of the benefit structure of the two plans. I do make the point that there are some things that are different, including the approach to making members contribute. I think that is a difference that has to be taken into account, but I am not sure, in my view, that it was particularly relevant to my presentation.

Mr Chairman: Why do we not go on to the examples? Maybe they will assist in understanding what—

Mr Brown: Yes. The examples which I will come to are based solely on the benefit structure and not based upon the contribution structure. In terms of the cost, I think that is something that needs to be addressed as part of a subsequent review or a separate review to this particular aspect of the presentation.

I guess the point that I wanted to make in particular is that in previous reviews of the judges plan, it has been pretty much reflected in the pronouncements that the idea behind the judges current pension plan is in fact to give recognition as if they had had a full career. I will come back to that in a moment.

Let me turn to an example. This is somewhat out of date, at least based upon recommendations that are being made for the judges' salaries, but I think it illustrates the principle nevertheless.

Let us assume a 1988 retirement at final earnings of \$81,510, which was the salary of a provincial court judge as of April 1987, and at that time that was the latest information available. I am making an assumption—in this case, in fact, it is an actual calculation—that the five-year average earnings of that same judge, based upon actual earnings in the previous five years, amounted to \$75,060. That gives you some indication of the difference between a five-year average earnings figure and a final earnings figure.

What I have then done is review the pension that arises out of two different plans, the public service superannuation plan and the judges plan, to give you some idea of the type of benefit that each plan produces.

If we look at the public service superannuation plan—and this again is for a full-career employee of 35 years—the gross pension is based upon the five-year final average earnings figure of \$75,060, of which 70 per cent, that is, two per cent times 35 years, is \$52,542.

The offset for CPP, I again hasten to add, would actually be calculated in today's terms based upon service since 1966, because that is when the CPP came into effect, but for purposes of the illustration, I want to show a mature plan as to what would happen 35 years after 1966. The offset for the CPP is then \$6,386, which gives a net pension of \$46,156.

The CPP added on—and that was the 1988 level of CPP as opposed to the 1989 level—was \$6,520, which gave a total income, including CPP, of \$52,676, which is in fact 70 per cent of the five-year average earnings. So the plan achieves its target. If we also add on the old age security benefit, which at that time was \$3,758, we see that we have an overall pension available of \$56,434, which is 75 per cent of the final average earnings.

If we come down the page now and look at what the judges plan will produce, it produces 45 per cent of the final earnings of \$81,510, and for comparison purposes we can now add on the Canada pension plan and the old age

security. That produces an overall pension of \$46,958 for a total amount related to the same final average earnings figure for similar comparison and provides a pension of 63 per cent.

One comment I found in my researches through the various papers was a quote out of the government's submission to the Ontario Provincial Courts Committee. I think this was in 1984. This was the current submission, but based upon a report of the committee in 1984. The Ontario Provincial Courts Committee at that time recommended the revised pension plan, which is the one that actually came into effect, the one that is currently there:

"The recommended retirement plan would provide approximately 75 per cent of pre-retirement income when taxes, OAS and CPP are taken into account. This 'replacement ratio' conforms with the intent of many of the submissions on this issue."

I think that is right except for one thing. To me, looking back at this previous example, what it seemed to me to indicate was that a target benefit inclusive of everything under the public service superannuation plan was 75 per cent. That was considered appropriate to provide a replacement income ratio, but I think that is on a before-taxes basis as opposed to an after-taxes basis, and I am not sure where the word "taxes" crept into this example or whether it should have done. I do not know.

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My own interpretation is that the policy of looking at income replacement ratios before the application of taxes better fulfils the mandate of this particular Ontario Provincial Courts Committee. I conclude that maybe the word "taxes" in this quote crept in on an unintended basis. It is only a supposition on my part, but I am assuming that an income replacement ratio of 75 per cent before taxes was what was trying to be achieved.

If you target 75 per cent replacement ratio after taxes, you are not going to be able to maintain the same sort of standard of living as you were accustomed to prior to retirement. You may say that is a quantum leap on my part but it all seems to work out quite well.

I just want to bring another example to the table which is based upon a somewhat higher earnings level. Just for the sake of comparison at the time that I made the presentation to the Henderson committee, I wanted to look at what would happen to judges if their salaries were to be increased to more or less the same level as the district court judges because I think that was one of the targets at that time.

I have looked at somebody retiring with a final earnings figure of \$125,700. I have assumed, and this is purely an estimate on my part, that the final average earnings figure would be about \$115,750.

To run very quickly through the calculation, you will see that the pension payable from all sources under the public service superannuation plan would amount to about 73 per cent of final average earnings whereas the judge's pension at that level actually results in a reduction on a replacement income ratio basis down from 63 per cent to 58 per cent.

I think that is an effect that perhaps needs to be looked at. I might just also point out that the district court judges plan allows for retirement on the same eligibility conditions as the provincial judges, that is, age 65

and 15 years of service, with a replacement ratio of two thirds, 66 2/3 per cent, of the final earnings figure.

I think that was the proposal that was put forward to increase the provincial court judges plan by 10 per cent from 45 per cent to 55 per cent at age 65 and from 55 per cent to 65 per cent at age 75 to bring them not only closer to what might be regarded as a reasonable pension for a long-service person but also slightly closer to the district court judges plan.

Just very briefly to cover some miscellaneous factors, it is true that there is a difference in member contributions. There is no question about that. That is something that will need to be looked at in terms of the overall cost impact.

It is also true to say that if the judges are to be granted a pension based upon full earnings, which seems to be the basic intention, nevertheless, unlike public servants, they have not contributed to a pension plan for the whole of that career. They will have come in and made some contributions or perhaps no contributions to the plan during the period of participation, and that I suppose is worth something.

On the other hand, there is no provision under the provincial judges plan for early retirement nor indeed for the generous bridging benefits that are available prior to age 65 under public service pension plans.

I might point out, as I said earlier, that under the judges plan, the addition to pension after age 65 is one per cent for each year, whereas the addition to pensions under the public service pension plan is two per cent a year. So that needs to be taken into account.

I think there are all sorts of things that are going to change when the federal government does decide to bring down its new tax policy in the next two or three years. That will have a major impact on the operation of all these plans and a major impact on the ability to put money into pension plans and money into registered retirement savings plans.

I will certainly be pleased to answer any questions that I can in that connection.

That is the presentation. I hope it has brought at least some understanding to the process that we went through with the Henderson Ontario Provincial Courts Committee in terms of coming up with its recommendation for the 10 per cent increase in the amount of pension payable.

Mr Sterling: Perhaps you or Mr French could answer the one question I have. You say in your presentation that in order to reach the levels of benefit, there is a recognition that when you retire as a member of the bench at the age of 65, you should have an equivalent pension to those who have worked all their lives in a vocation.

Where does that assumption come from? I just want to know where it comes from because basically what you are saying is that if I were appointed to the bench at the age of 45, the assumption would be that I had not at that point in time either saved or contributed to a pension plan or was able to transfer to a pension plan any benefits at all that I would benefit from when I was 65. The assumption is that because I sat as a member of the bench for 20 years, the state would then become responsible for taking care of me after I retired.

Mr Brown: Perhaps I could give a preliminary answer to that and Mr French could follow up.

As I understand it, what has been more or less accepted is the fact that judges are appointed fairly late in their working lifetimes but at the point in time where they are about to enter high-income years, at which time they could do some saving.

There does appear to be some evidence available that prior to appointment as judges, there has been very little opportunity for these people as lawyers to accumulate any sort of retirement income. They have been too busy building a practice, looking after children and so on and so forth.

If I understand it correctly, I think that part of the policy of recognizing a full career is designed to overcome that apparent shortfall.

Perhaps Mr French could come in.

Mr French: I agree with what Mr Brown has said. In addition, I would add that prior to 1984, the provincial court judges of Ontario participated in the public service pension plan. It was found to be wholly inadequate because it provided a formula of two per cent per year of service, so that you would have a long-service judge who was appointed at the age of 45, let's say, retiring with a minimal pension benefit because he or she would not have had enough time to accrue the theoretical maximum of 70 per cent.

In 1983 and in 1984 when the new plan was designed, there were several theoretical considerations that were taken into account. A general theoretical consideration was that it was intended to mirror to some extent the experience in private practice. That was that the lawyer in practice was generally investing his or her money in the practice with a view to using the practice as a retirement vehicle.

Two very simple examples would be the sale of the practice or the bringing in of partners into one's practice. Another example would be the use of converting wills accumulated over 30 years of practice as a retirement vehicle so that the lawyer could continue to serve until he or she was 75 years of age. That was the type of theoretical consideration that was brought into effect.

It was also recognized that many individuals on appointment to the bench had to cash in some of their savings because in the first year of appointment as a judge, the individual would in effect trigger two tax years and would have an accumulated tax liability. Many judges found themselves having to liquidate some of their individual RRSPs in order to attend to their tax liability.

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These were some of the theoretical considerations that resulted in the straight notion of being a judge for life with a fixed pension for life based on, in effect, a whole working career of 35 years, as Mr Brown has indicated. Those are some of the general considerations of how they arrived at this fixed percentage notion.

It was also in part a recognition based on the plan that was available for the federally appointed judges, because, of course, there was a fixed per cent pension after 10 years of service based on their final year of service as

well. That was also taken into consideration in 1984 when the plan was developed.

That is why you see the curious anomaly of part-time service that we were discussing on the last occasion, because part of the theory was that when the judge turns 65, we will allow the judge to continue to serve on a reduced service basis and accumulate an increased per cent pension entitlement, because it was known in 1984 that the 45 per cent would not generate enough of a pension payout in order to mirror the public service, certainly not even remotely compared to what was available for the federally appointed judges.

The theory was, let's have a type of superannuation in that the judge will be able to work on a reduced service basis and in so doing will be able to be paid on a reduced basis but will be able to accumulate an increased per cent per year of service.

That was another component that was brought in during 1984. Hence, when the Henderson committee came to look at pension and came to look at these things, rather than redesigning the wheel what it decided to try to do was to increase the eventual payout of the plan. That is the essence, I suppose, of their recommendation.

That is a long-winded answer, but those were some of the design considerations that were entertained in 1984 when this plan was developed.

Mr Sterling: I do not think we are going to consider the report today in terms of discussing it with a few other members anyway, but the other part I would like some help with is that I feel the one comparison we have not looked at closely enough is the district court judges' benefits, etc.

We have now a proposal in front of our Legislative Assembly to merge certain courts, and in the second stage we would no longer have a distinction between district court judges and provincial court judges. I think it would be prudent for us to understand not only the financial differences but also the eligibility differences and the contribution differences in the two programs. Maybe our researcher could get some help from Mr French or Management Board on that.

I think trying to compare provincial court judges with public servants is not a fair comparison. I think it is a poor comparison. I think that all of the assumptions and the fears of setting a precedent you might have in terms of dealing with provincial court judges should not be there when you are dealing with the provincial court bench.

My greatest concern is that when we merge these two courts, which hopefully will happen in my lifetime—

The Chairman: How old are you?

Mr Sterling: Twenty-one. When this happens or should happen, I would hope we might have had some kind of look at where they are so there will not be a problem in bringing the two levels of judges together at that time. I would really like to see a comparison on an item-by-item basis, if that is possible, dealing with each of the recommendations of the Henderson report so that might help us in drawing some conclusions as to whether we thought they were reasonable.

The Chairman: Who are you asking to do that?

Mr Sterling: Susan Swift, our research officer.

The Chairman: I will let Susan speak for herself.

Mr Sterling: Either that or we hire a consultant to do it.

Mr French: If I may assist just a little in that, the federal government produces annually for the federally appointed judges a brochure or a publication from the Office of the Commissioner for Federal Judicial Affairs, and it contains an itemization of the whole of the benefit package that is available to a federally appointed judge. I do not have it with me today, but that is information that I have access to and I could make that available to you.

I also have information available today that I could go through, on a very general basis, to make some comparisons with respect to some of the items that have been prepared by Mr Thomas in his document. I could go through that from a very general point of view or, alternatively, I could make that available to Ms Swift and, under certain headings, make that comparison or at least provide that information.

I should say that, as you know, I did not come before the committee with a view to presenting all of these issues or arguments again. I had done all of that before the Ontario Provincial Courts Committee, and I had gone through all of these items before that committee. Of course, I had compared all of what was available to the provincial court judge with that which was available to the federally appointed judge.

I am sorry I cannot give that to you in specific detail this afternoon. I could give it to you in general if you wish or, alternatively, I could make it available to Ms Swift, whatever your pleasure may be.

Ms Swift: Mr Sterling, I was just going to say that I could certainly collect the kind of information that Mr French has spoken to you about and look at the Guthrie report and perhaps see what is in there that might be available. I do not feel qualified to do a comparison, however, between what might be available for the district court judges and what you have heard today.

The Chairman: Maybe that, along with the information that Mr French has indicated he could get for us, might give us enough to go on.

Mr Sterling: I just think it would be useful, as we went down the particular recommendations, to know exactly what is happening with regard to the other bench, which is obviously the closest comparison to our provincial court judges here.

The Chairman: Yes, but also let the lawyers on the committee here determine whether or not they want to sit on the provincial court bench or the district court bench or the Supreme Court bench.

Mr Sterling: Some of us in opposition, Mr Chairman, will never get the choice.

Mr Polsinelli: Some of us may only be getting a park bench.

The Chairman: If you could be good enough, Mr French, to make that first piece of information available through the clerk, that would be helpful,

and perhaps Susan can do what she has indicated. I think it is fair that she not be called upon to put it together in a definitive fashion. She can put it together for our purposes and we then will use it ourselves. Is that agreed upon?

Mr French: Yes, I will make that information available to her and assist with respect to that information.

Just in specific response to the question about the bench that you should strive to be appointed to, bearing in mind the federally appointed judges enjoy approximately three months of vacation and a pension of 66 2/3 per cent of a salary that is perhaps \$30,000 in excess of that paid to a provincial court judge, the conclusion is self-evident: You should strive to be appointed to the district bench or to the Supreme Court.

The Chairman: It would create some difficulties for some of us.

Mr Sterling: And not so great difficulties for others.

The Chairman: Well, not for long.

Mr Sterling: I was talking about qualifications.

The Chairman: I see. Are there any further questions of Mr Brown or Mr French?

Mr French: If there are no further questions, perhaps I could offer a few further comments to conclude, then, if I may. Would that be agreeable?

The Chairman: Go right ahead.

Mr French: One of the issues that arose was the question of the automatic indexing of salary. I took the liberty of preparing some copies of the relevant extracts from the Judges Act, which is the statute, of course, that provides for the automatic increases in the salaries made available to the federally appointed judges. If Mr Arnott would assist, perhaps we could hand those out. It might assist you by seeing the mechanism that is in the federal Judges Act for the automatic increases in the salaries paid to the federally appointed judges.

1650

This is an extract from the Judges Act, and I am referring in particular to section 25, which concerns the periodic adjustment and revision of salaries. You will see the reading of the particular section of the federal legislation. It provides that for the 12-month period commencing 1 April in each year, the salary paid to a judge "shall be the amount obtained by multiplying..." The practical effect of that wording is an increase in accordance with the industrial composite index or seven per cent, whichever is the less.

The Chairman: I thought the report wanted it to be attached to the consumer price index.

Mr French: That is correct. That was what Henderson had recommended. I am showing this just as an example of what is done on the federal basis in the wording of it. When we were here on the last occasion, some of the members asked how that worked, and I am just reproducing this legislation to give you an example of how it works.

The net effect is that on 1 April of each year, the salary that is paid to a judge is increased and you do not have this annual confrontation that seems to take place in Ontario between the government and the judges.

The question had also been asked about the federal review. You will see that is dealt with in section 26 of the federal Judges Act, and it provides that "Within six months after April 1, 1986 and within six months after April 1 in every third year thereafter, the Minister of Justice of Canada shall appoint not fewer than three and not more than five commissioners to inquire into the adequacy of the salaries...."

The most recent report you have heard discussed before the committee was the Guthrie report. The requirements of that committee are similar to the requirements that are made of the Ontario Provincial Courts Committee.

You will see that in subsection 26(2) the requirement is that the Minister of Justice "shall cause the report to be laid before Parliament not later than the 10th sitting day of Parliament after he receives it." Pursuant to the standing orders of the House in Ottawa, the report is referred to the standing committee on justice and the Solicitor General in Ottawa. That is how it works on the federal basis.

I do not propose to respond further to the document that had been prepared by Management Board, but I would like to make one further comment to you with respect to how it is that I see this committee should deal with the Henderson report.

We dealt with that on the occasion of my earlier attendance before you and we dealt with the question of "consider," which of course is the wording of the agreement between judges and the cabinet; that is, that the standing committee on administration of justice consider the report. To assist you, I obtained a photocopy of the dictionary definitions of the word "consider." Perhaps Mr Arnott could assist us again by handing those out.

The page marked 404 is an extract from Webster's dictionary. The page denoted at the top with 483 is an extract from the Oxford dictionary. Looking first at Webster, in the right column, "consider" means "to view attentively, to survey, examine, inspect." Other definitions: "to contemplate mentally, to think over, meditate on, to take into practical consideration, to regard, to look upon." Under the Oxford definition, again in the right column, "consider" under 1 is "to reflect on, think about with a degree of care or caution, to treat in an attentive manner, to think of, reflect, deliberate, ponder."

These are all of the definitions in the common understanding of what it is to consider. I submit that was the expectation of the parties to the agreement in 1987; that is, that you would reflect attentively upon the Henderson report, not necessarily attempt to re-examine and reformulate all of its recommendations but rather to decide whether it was a well-reasoned report and whether its recommendations, viewed as a whole in the light of what it has done, appear to be sound.

I submit that the whole purpose of the establishment of an Ontario Provincial Courts Committee was to create an independent body, bringing to its task a considerable and varied expertise of its own and likely to develop quickly an even greater expertise with the kind of problem assigned to it, with the hoped-for result that the financial accountability of cabinet and the independence of the judiciary would be reserved in a climate of mutual respect.

I submit it is inherent in the conception and operation of such a committee that its recommendations will virtually always be accepted. That is how I believe the provincial court judges of the province see the report and the work of the Ontario Provincial Courts Committee, and they see this committee as assessing whether the Henderson committee lived up to the expectations of it and whether its recommendations as a whole appear sound; not to retry the case but to see if as a whole it meets the expectations of the parties; and if so, then to forward it promptly on to cabinet in order that cabinet may act upon it as it sees fit.

Those are my submissions, Mr Chairman, unless you or your fellow members of the committee have any further questions.

The Chairman: Have committee members any questions of either Mr French or Mr Brown?

Mr Sterling: I guess our decision at this point, Mr Chairman, is whether we continue along and try to go through this recommendation by recommendation, or whether we say it has been a sound process and that we acknowledge the work of the provincial courts committee and generally approve of the report. I do not know which way you want to—

1700

The Chairman: That was going to be my next question, after I found out if there were any questions of these two witnesses. Are there no questions of Mr French or Mr Brown? Are there any questions of any of the people who came before us from Management Board? Thank you very much, Mr French and Mr Brown.

The next question would be whether or not we would consider dealing with the report in camera or in open hearing.

Mr Sterling: I think we should do it in open hearing.

The Chairman: All right. Is that the wish of everyone? Is there unanimous consent that that is how it will be dealt with?

Agreed to.

Mr Chairman: I suppose the next issue is to determine when we will do that. Perhaps that is a matter that should be left for the steering committee.

Mr Polsinelli: Given Mr French's latest submissions on what he believes the report is doing in front of us, I think we should also discuss how we are going to deal with the report when we deal with it. I am prepared today to adopt a motion similar to what Mr Sterling indicated a while ago, that the process was basically sound and makes nice reading and let's forward it on to the government. If that is Mr French's intention of what we should be doing, I am prepared to do it right now. It would be interesting to see what the balance of the committee feels in that regard.

The Chairman: I think Mr French's final submission to us was that the terms of reference of this were that the justice committee would consider, and he gave us definitions of what "consider" means. I do not believe he was simply asking us to say, "They did it."

Mr Polsinelli: "We respect what they did." If we look at the dictionary definition of "consider," item 8 in Webster's is, "to respect, esteem."

I submit that if, as Mr French indicated, the purpose is not for us to go through the individual recommendations to look at the cost implications of the recommendations but rather to determine whether we feel that the recommendations in toto seem to satisfy the wishes of both parties without going into the specifics of the recommendations, then I say I am prepared to adopt the report today without making any specific comment on the individual recommendations.

The Chairman: You each have a copy of the report that was made to the federal House of Commons by Blaine A. Thacker, MP, as some form of representation about how we might go about doing this. Mr Kanter?

Mr Kanter: I think Mr Sterling averred earlier to a question of timing on this and I think that is an important matter. We have spent considerable time on it. We have gotten a considerable amount of information. We have referred to Mr French on several occasions. We have some information from Management Board.

My recollection from the last time the committee met was that there were some questions at that time put by my colleague Mr Polsinelli. In terms of some specific questions, I think Mr Offer had some and Mr Kormos had some for specific pieces of information. I do not believe we have that information before us yet. I think those questions were sincerely put and I, for one, was looking forward to the answers to those questions.

We also heard a request for some information from our research officer today. I think Mr Sterling requested that she provide some information. Mr French offered to provide some information with respect to the salaries and benefits payable to federally appointed judges. I think that information would also be useful.

I think this committee should consider in detail the recommendations of the report. I guess there are all kinds of definitions of "consider," but I notice one that suggests a more conscious direction of thought, greater depth and scope, greater purposefulness, etc, but that is in the very fine print and I am beginning to have trouble reading the very fine print of these things.

What it comes down to is that I think we do have an obligation to consider the Henderson report in some detail. I think there are two sources of information we are still looking to before we do that, but I think we should do it as soon as we receive that information.

I would move a motion that in essence has three parts. I have it in written form here.

The Chairman: Mr Kanter moves that: (a) the justice committee request that Management Board of Cabinet respond as quickly as possible to questions concerning the Henderson report raised by members of the justice committee at its meeting of 16 May; (b) that the research officer gather information regarding salaries and benefits payable to federally appointed judges; and (c) that the justice committee proceed to draft recommendations relating to the Henderson report as soon as the information referred to above is received.

Mr Kanter: I would add, perhaps in explanation or elaboration of that motion, that I would not expect that the gathering of this information would take longer than two or three weeks at the maximum. The questions of Management Board were quite specific. I would hope they could have them in that period of time, and I would similarly hope the research officer could have the information before us as quickly as possible. My suggestion would be that we are looking at approximately two weeks' time.

Mr Sterling: Of course, the information I was requesting of the research officer would not be relevant if we took the alternate course. Neither would any of the evidence Mr Polsinelli asked for be relevant if we took the other course, of saying that the basic approach by the Ontario Provincial Courts Committee was sound and that it appeared to have received most of the evidence and to have drawn some conclusions.

One of the problems I find with this whole process in dealing with this particular matter is that I have not really dealt with anything like this in my 12 years as an MPP. What we are essentially being asked to do is to make recommendations relating to the payment of people who heretofore were paid by the provincial government. If we were charged under legislation with making final decisions about what the pension plan should be after the provincial courts committee had been dealing with this, then I would feel more comfortable in going through it clause by clause, as we would with a piece of legislation. With a piece of legislation, even though this committee in any majority government is controlled by the government members, you go through it and you make final decisions about what the law shall be tomorrow.

In going through this particular report, it is like rehashing the report or going through it. I am not confident that I have had the same benefit of the evidence that the members of the provincial courts committee have had in drawing their conclusions. It is kind of an anomaly that we are going through it. I find it very difficult. Quite frankly, I would have a lot of difficulty in opposing any of the recommendations even after I had received a bit more evidence, because I would always feel that I had not had the same benefit the people on the Henderson report had.

I think what we should do is not waste any more time. The members of the government are the people who are going to have to make the dollar decisions on this and on whether they are going to give up control in terms of the other things. Whatever I say in opposition, I do not know whether it is going to matter a hoot, anyway. Why not just accept the report and say it appears to be reasonable in terms of what it does and that it is going to be government policy that is going to decide the other part? I just think it is a waste of time of our researcher, of Mr French and of all these good people from Management Board to continue on it.

1710

Mr Polsinelli: I may be at odds with my colleague's motion, but I am quite prepared to undertake both routes, whether it is the route of seeking further information and trying to go through the recommendations in detail and trying to either endorse, accept, refute or amend the various recommendations, all 45 of them, as we go along. But I think that is the more difficult course and perhaps the course that would not do justice to the report.

I tend to agree with Mr Sterling in his recommendation. I guess we will have to be careful about the wording of our motions, Mr Sterling, because I will not be prepared to support a motion that would endorse all the

recommendations in the report without having gone through them in detail. However, as a member of this committee, I would be prepared to support a motion that would accept the process the report underwent in terms of developing the report—that is, the establishment of the Ontario Provincial Courts Committee, the individuals who are on the committee and the process through which the report was prepared—and basically forward it to the government for its consideration. That is the type of motion I would be prepared to accept.

Mr Kormos: I suspect we have to go one step further, which is to say that inherent in what we decide has to be an endorsement of the procedure undertaken and recommended and all that that entails, including the recommendations. I would think that Mr Sterling's suggestion as to a motion to be considered by this committee would be to indicate that we have considered the report, we approve of the process indicated and we adopt the recommendations, and then we look to the government to give effect to its commitment in the letter of agreement; which is to give great weight to the contents of the report, which I presume is not just process but also the recommendations.

As I understand it, that is the commitment of the Attorney General (Mr Scott) in terms of this report. I do not interpret the announcement of 5 May as in any way relieving the government of its obligation to fulfil that commitment. I presume that was some sort of interim measure until it had the opportunity to give great weight to the contents of the report.

I am interested in hearing if there is anything about that report that can be isolated and seriously criticized, as compared to merely being something of both, which any given person here may at some time disagree with. There could be individual disagreement with the numbers, but in my view none of those numbers and recommendations are so far out of line that they do not warrant an adoption of the recommendations and getting the matter through this committee and then on to the House, where it should be.

Mr Mahoney: I find it somewhat interesting that we are talking about adopting a report of what is in essence a special-purpose body making recommendations after extensive hearings that to date have only been adopted in part with the announcement by Management Board. In reality, if we were to adopt these recommendations, all or none, we are perhaps running the risk of saying that we either agree with Management Board's decision or we do not agree with it, and we can get into the partisan situation when really we are walking on a bit of a funny line here.

I do not think there is any reason we cannot say that we certainly agree with the format, that we agree with the system that was put in place—it was quite thorough and the analysis was quite extensive—and we commend the committee for the work it did. But I am hearing that we are indeed to get into the position of saying: "We agree with the recommendation the committee made that perhaps we have to go through all the hearings." I do not think that should be necessary.

I have some difficulty with making a decision. If you are asking us to make a decision as a committee as to whether or not Management Board should adopt this entire document and therefore give the raise that is being suggested back to 1987, rather than what appears to have been a compromise position on the part of Management Board, then I have some problem with that without a lot more information.

I do not think this committee should be put in the position of recommending that this increase either be adopted or not be adopted, but rather that we could support the process. We have had additional requests for comparisons that I presume were asked in good faith, with the intent of comparing the district and federal judges to the provincial judges, presumably to then make some kind of decision—I assume, not just for filler information or additional report information.

The other day the argument was made, I think by Mr French, as to whether or not this committee should even really be considering the recommendations. Again, I would say that if we are going to talk about recommending the government adopt all of these, then I want the balance of the reports that have been requested to allow for at least the full weight of that decision to be made. Perhaps we even have to consider more hearings, although I find that personally to be a little bit of a waste of time, because I think the committee did its homework.

I would ask that we get those reports and defer this for a period of two weeks, which is what Mr Kanter's motion would allow for, and have time to perhaps consider a proper recommendation to Management Board.

The Chairman: The only difficulty we have is that the agreement that was referred to in the Henderson report between the Attorney General and all involved actually suggested that it be referred to the standing committee on administration of justice: "[It] must be tabled in the Legislature and referred to the standing committee on administration of justice." Following receipt of a report of the committee and its tabling and consideration by the standing committee on administration of justice, the government would do certain things.

It is squarely in our court; whether we agree that it is comfortable to have it here, it is squarely in our court under the terms of that agreement.

Mr Mahoney: With respect, it is not a matter of comfort level, it is a matter of an agreement between the Attorney General and the implementation of recommendations by Management Board.

Being one of the few nonlawyers on this committee, I would be interested in your and others' thoughts. But it seems to me that there is an agreement between the Attorney General and the committee to do certain things, and that is here, and now we are talking about implementation, which is an administrative thing and a Management Board thing. I think there is a far range of differences between those.

The Chairman: Actually, I should go on to say that the opening of that to Mr French was that Mr Scott indicated that he would like to outline the proposals that I will place before the cabinet if they have the support of the provincial judges. I guess it is the final analysis after we consider it that it would be placed before cabinet. That is the way I would read it.

In any event, I have a number of names: Mr Kanter, Mr Polsinelli, Mr Kormos and Mr Sterling. To be fair, I am going to mix them up: Mr Kormos, then Mr Kanter, then Mr Sterling, then Mr Polsinelli.

Mr Kormos: I bet you Mr French did not bring the Peabody, because that is the one that has "pettifoggery" in it.

It is just incredible to hear people say: "Yes, we agree with the

process, but we are concerned about the recommendations." One is an inherent part of the other. In my view, unless you can find anything about the recommendations contained in this report that does not appropriately flow from the process that we are approving, that we are saying we agree with, then that is part and parcel of it.

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The purpose of examining this report was to determine whether indeed the process utilized was inappropriate and whether or not the recommendations made were inappropriate in view of, again, that initial process. Nobody suggested that any of those recommendations is less than appropriate, and nobody suggested that any of those recommendations flows less than naturally from the structure that was set up. You cannot suck and blow on this one. You cannot say, "Yes, we agree with the process, but we still want to consider the recommendations." One flows naturally from the other.

I agree with the comments made both by Mr Sterling and Mr Hampton when we last met, and that was to the effect that the purpose here is to look at the process and the procedure and consider whether it is an appropriate one. Surely this exercise is not going to be repeated, and the whole purpose of the exercise of the committee was to avoid this confrontation that has been referred to time and time again; a confrontation that is a long-standing confrontation and one which I think, in everybody's view, seriously impacts on the independence of the judiciary.

That is the thrust of what the committee is doing right now, and to go beyond that is, in my view, grossly inappropriate. You cannot have it both ways, and I would like to know how people think they can have it both ways.

Mr Mahoney: May I have a point of order or clarification?

The Chairman: Try, whatever it is.

Mr Mahoney: Are we being used as an appeal committee because the judges are not satisfied with the decision by Management Board? Can I just simply put that fact out and have an answer?

The Chairman: I do not think you should put that to Mr Kormos; but no, we are a reference of appendix C in the Henderson report. It says on page 141 that this report was to come before us after its tabling for our consideration. That is why it is here.

Mr Mahoney: So we have considered it, according to the definition.

The Chairman: I guess that is what we have to decide.

Mr Sterling: Could I give a notice of an intention of a motion? I know there is a motion on the table. I intend to put a motion forward that will say that I move that the committee supports the process undertaken by the Ontario Provincial Courts Committee and endorses in general the recommendation made by it in its report of 27 September 1988, made to the Lieutenant Governor in Council. That is what I would see as the recommendation we should make.

I do not know whether you can agree with that or whether you want to go into each of the financial implications of the pensions and all the rest of it.

Mr Polsinelli: But Norm, does it have to say "endorses in general"?

Mr Sterling: How do you indicate your support?

Mr Polsinelli: Your motion says that the standing committee supports the process that was established in terms of the recommendations and forwards it on to the Legislature, and through the Legislature to Management Board for its expeditious something or other. Your motion actually does imply, even though you say "generally," that we agree with recommendations 1 to 41. If you want to do that, then I am going to support my colleague Mr Kanter in requesting that we get all the information and that we go through the recommendations one by one.

The Chairman: Mr Kanter's voice changed dramatically there.

Mr Sterling: That is just a notice of motion.

Mr Polsinelli: I am just discussing the notice of—

The Chairman: I see, the notice of intention.

Mr Sterling: Mr Kanter is ahead of me. Go ahead.

Mr Kanter: I will pass at this time. I would like to speak before we vote on either motion.

Mr Sterling: I do not know whether I agree with all the proposals in here or not. Quite frankly, it would be very difficult for me to explain these to a lot of my constituents back home.

I understand also that prior to our getting charged with undertaking the review of this, the Chairman of Management Board made a move, which I found a little bit hard to take, as a member of the standing committee on administration of justice, in dealing with this issue sort of post one of the decisions being made, a major decision in the whole report.

In general, whether you are saying we agree with pensions going from 45 to 55, I do not think that says that. It says that when they make the decisions, they have to take into account that generally speaking we are out of line and they have to deal with it. If they only deal with it by giving a 1989 raise to \$105,000 and a—

Mr Polsinelli: I understand what you are saying, but I do not think your motion says that. I think your motion says specifically that you endorse the recommendations. It is as if we had gone through each one of the recommendations and you had said, "Yes, this a good recommendation and should be implemented."

I am saying that I agree with the part of your motion that says we support the process, that we support the way this report was arrived at. Quite frankly, I think most of the recommendations deserve implementation, maybe even all of them. But in going through them, I think there would be some that maybe we could talk about.

What I would like to see going on to the government and Management Board is saying squarely: "We looked at the report, we took a look at the process, we had representation before us from Management Board and the representative of the provincial court judges. We think the report should be given a great deal of weight. By the way, Management Board, exercise your responsibilities as part of the government and you make the dollars-and-cents decisions."

The Chairman: I am just going to throw this little item out before I call anything, Mr Sterling. This report is actually here for two reasons. Really, what it may come down to is trying to interpret what the memorandum of 21 July was all about. It is here because it is a statutory report, and under the Courts of Justice Act, and that is reflected in section 6, it was to be laid before us.

The second part seems to say, and maybe it is the unclear one, that we are to consider it after it has been tabled. Well, we have considered it. Then it says the government will do certain things, including the tabling of legislation, establishing the salaries and so on. I am not sure where that puts us; if we have considered it, what do we then have to do beyond that?

Mr Mahoney: Can recommendation 3 on page 159 of the report be any more clear? "We recommend that provincial court judges receive annual salaries, effective 1 April 1987, of \$105,000." That is what this report recommends. Management Board has granted them \$105,000 as of 1 April 1989 with some retroactives and percentage increases in 1988 and 1987, so it is contrary. If this committee says we agree with this, then in essence what we are doing is saying we do not agree with Management Board, are we not?

Mr Kormos: Does the government not intend to live up to the letter of agreement?

Mr Mahoney: If you want to say that in your role as opposition and criticize the government, that is your job and I have no problem with that. If we want to get into whether the individual members of this committee believe that perhaps a reasonable position is \$105,000 as of April 1989 and the two retros that occurred in 1988 and 1987, then maybe what we have to do is have Management Board's decision in front of us on one side of the ledger sheet, the Henderson report on the other side of the ledger sheet and vote which one we agree with.

I do not know why we have to beat around the bush on this. We have such a sensitive issue as judges' salaries, we have a recommendation from a committee that they be increased to a certain level and we have a decision by Management Board. I think Mr Sterling has perhaps offered a legitimate form of criticism in that it would seem that the proverbial horse was put before the cart. But that is our lot and that is where we stand.

As a result, if we are going to go through and make recommendations as a committee which would be contrary to either this report or to the decision already rendered by Management Board, then I think we need a lot more information.

If we are simply going to consider this report, receive it for information and refer it to the Attorney General and the Chairman of Management Board, then perhaps that is all we should be doing, saying: "It was a job well done. The structure was fine. Here you go, boys. Let the appropriate people make the decision."

1730

Mr Polsinelli: I do not think we necessarily have to make a recommendation. I do not think we have to either endorse or not endorse any of the recommendations. This is not a government bill. With a government bill we have the option of going through and amending it and referring it back to the

House amended or not reporting it at all. With this, I think there is an obligation to let the House know that we have taken or not taken some action on it; but we are not under any obligation to accept, endorse or do anything with the recommendations.

In terms of Mr Sterling's motion, I think it would be appropriate if he would amend it to indicate that we support the structure, we support the process, but we are not commenting on the recommendations because that is going to be Management Board's decision.

The Chairman: We already have Mr Kanter's motion before us. I would like to deal with that first.

Mr Polsinelli: Mr Chairman, this committee—

The Chairman: As a procedural matter either he withdraws it or we deal with it and then we can get on to Mr Sterling's motion.

Mr Sterling: There is a fair bit of play here in terms of the procedure right now, and I hope we are not going to hold to the hard and fast of whose motion is first, because we are playing around here a bit.

When we have dealt with other sensitive issues—for instance, MPP's salaries, benefits, etc—committees of the Legislature have come up with recommendations. They take them down the hall and then they have the snuff kicked out of them by various other powers that be in this province.

If we spend another two weeks or three weeks going through recommendation and recommendation, it ain't gonna matter a hoot, quite frankly, as to what happens in the end. But I thought that as we went through this particular report, there was general agreement. Maybe the \$105,000 is not the right amount when it was kicked in, when it should not be kicked in, or whatever.

Whatever I say in this committee as to whether it should be last year or the year before, that is not going to—what?

Mr Mahoney: Say that in your motion.

Mr Polsinelli: Amend your motion.

Mr Sterling: I thought I did when I said "in general the recommendations"—

Mr Mahoney: I will vote in favour of you and not my colleagues.

Mr Sterling: Well, let us work at some wording before the next meeting and—

Mr Polsinelli: May I suggest that is perhaps an appropriate recommendation, that we defer votes and any motions until the next meeting?

The Chairman: You are moving deferral of Mr Sterling's motion and that is nondebatable.

Mr Polsinelli: I do not think I have to move. I think procedurally this is a notice of intention to move a motion and we can defer it until the next meeting. Is that not correct? So we will just have the votes next meeting.

The Chairman: Is the committee in agreement with that?

Mr Mahoney: To do what?

Mr Sterling: I have not put my motion. Mr Kanter, do you want to withdraw your motion or do you want to keep it on the table?

Mr. Kanter: It seems to me that we have a choice. Obviously, I do not want to withdraw my motion and then have a vote on Mr Sterling's motion. If there is an understanding that we are having a general discussion and there will not be any votes on any motions at today's meeting, I suppose I have no objection. If it is a level playing field, as some members of some parties like to talk about, I suppose I have no difficulty with that.

However, that having been said, I thought there was some information to speak to that Mr. Sterling sought, I thought in good faith. There was some information that my colleague sought, I thought in good faith. I suppose that if we do not formally move it, there is perhaps a little less chance that we might actually get it, and that causes me some concern.

The second point I would like to make is that we heard Mr Sterling and perhaps others talking about this process as if it is an all-or-nothing process; that is, you either endorse it and send it on or you forget it and this committee takes no action. It is as if the hearings that we have had here were of no effect and consequence. I do not think that is a very responsible way to proceed.

On the matter of indexation, for example—a matter of great concern to the judges, as I understand it—we had some fairly specific recommendations by the Henderson committee. We also had some information provided to us by Mr French on a somewhat different proposal, certainly relating to the same thing, but as I recall, there was a different formula. One talked about the consumer price index, and I think the other one may have talked about the average industrial wage, the industrial composite. I think this committee could play a very positive role in preparing—

The Chairman: I do not think Mr French was saying that. He just gave us a copy of the federal Judges Act, as I had asked him that question.

Mr Kanter: Yes. I was also interested in that information about how the federal procedure worked.

The point I am trying to make is that I think this committee could potentially play a useful role in refining the Henderson recommendations, in moving towards an adaptation by the government; or we can in a sense throw up our hands and say: "Yes, we have it. Now you folks deal with it."

Quite clearly, I would prefer that we play an active role—that is why I moved the motion I did—as does Mr Sterling, I suppose. If he wants to give notice of a motion and have us vote on it at a future time, there would be no great problem to me if we voted on it at a future time. But I want to indicate that I feel quite strongly that this committee can and should play a useful and positive role in the development of policy in this area.

Whether we vote on both motions today or at a subsequent time, I will certainly be supporting the intent of the motion I moved today.

The Chairman: As I understand it, Mr Polsinelli suggested we have an

open discussion and that the two motions be delayed to another day. What I asked before was if we have unanimous consent that that be the way we deal with it or do we—

Mr Sterling: It is fine by me. It is Mr Kanter's motion.

Mr Kanter: Providing that we do not vote on any motions today, I do not have any problem with that.

The Chairman: That is the general nature of what I understood Mr Polsinelli to move.

Mr Kanter: I have no difficulty with that.

Mr Polsinelli: As the motions were both brought without notice, I believe that under the standing orders today is deemed to be notice, and if requested by the committee or a member of the committee the vote would not be taken until a subsequent meeting anyway.

The Chairman: We have unanimous consent to that. So agreed?

Agreed to.

ORGANIZATION

The Chairman: Just before you decide to leave, I have had tabled with me a motion by Mr Runciman.

Mr Polsinelli: Mr Runciman is not here.

The Chairman: It is not necessary. It is simply notice of the motion. Would you like me to read it?

Mr Polsinelli: Perhaps the clerk can make copies of it and distribute it.

The Chairman: Maybe that could be done. In the interim, we should be discussing the question of a subcommittee meeting to determine what our agenda will be for—

Mr Sterling: In fairness to Mr Runciman, in terms of his giving you the notice, the whole purpose of the notice is for us to know what—

The Chairman: I will read it. I felt that it gave an opportunity for everybody to have a copy of it. The notice of motion is dated today:

"Mr Runciman moves that in order to maintain public confidence in the Ministry of the Solicitor General, given questions surrounding the Solicitor General's actions in the early morning hours of 9 April"—

Mr Polsinelli: I think Mr Runciman should be here to place his own motion and be prepared to discuss it.

The Chairman: It is a notice of motion, and I have indicated that it is not necessary that the mover be in attendance.

Mr Polsinelli: Then the appropriate course is that the clerk will make copies of it, distribute it to members of the committee and we will deal with it at our next session.

Mr Kormos: You have started reading it.

Mr Polsinelli: I have to go out and have a cigarette.

Mr Sterling: Go ahead.

The Chairman: I am going to continue reading it:

—"it is imperative that this committee immediately review the OPP report dealing with the matter with a view to determining the appropriateness of its conclusions. It is understood that confidentiality will be respected and the names of individuals other than the Solicitor General will be deleted prior to tabling of the reports with the committee, or alternatively that hearings be held in camera."

The clerk can make copies of that.

I think we should arrange a subcommittee meeting to discuss the question of what our agenda will be for the next week and also to place in context when we will deal with these motions with reference to the Henderson report.

Mr Sterling: When is a good time?

The Chairman: We could do it right now. Trying to get hold of some of you guys is like—

Mr Kormos: Could we make it six o'clock, Mr Chairman, when Mr Hampton could be here?

Mr Sterling: I think it would be better after question period tomorrow.

Mr Kanter: After question period tomorrow would be okay with me if it is okay with the rest of the committee.

The Chairman: Is that agreeable with Mr Hampton? We then have unanimous consent that the subcommittee meeting will be after question period tomorrow.

Mr Kanter: Where, Mr Chairman?

The Chairman: In the committee room or my office, whichever is—

Mr Kanter: Can we do it here? It might be easier if we can do it here.

Mr Sterling: What about the library at the end of opposition side, west lobby? That way you catch them on the way down.

The Chairman: Okay. After question period tomorrow, in the library at the end of the opposition chamber.

The committee adjourned at 1741.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
ORGANIZATION

TUESDAY, 6 JUNE 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cooke, David R. (Kitchener L) for Mr Polsinelli

Fleet, David (High Park-Swansea L) for Mr McGuinty

Martel, Shelley (Sudbury East NDP) for Mr Hampton

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, 6 June 1989

The committee met at 1543 in room 228.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
(continued)

The Chairman: I recognize a quorum. You have an agenda before you. We are dealing with the Henderson report. There was a motion by Mr Kanter, and you have a copy of that attached. I believe there was also a motion by Mr Polsinelli, but we agreed that we could have a general discussion on the matter before specifically dealing with Mr Kanter's motion. Is there any comment, discussion or debate on Mr Kanter's motion?

Mr Sterling: I scratched out in pen today a motion, and shared it with my colleagues in the Liberal Party and the New Democratic Party, which basically said the committee had considered the Henderson report and we were satisfied that the Henderson committee or the Ontario Provincial Courts Committee had dealt with the issues in a reasonable manner and had dealt with all of the relevant evidence relating to the mandate it was given. I also said in the motion that the committee did not feel an additional review of the individual recommendations of the Henderson report would be necessary as we would only be duplicating what in fact the provincial courts committee had already done. Therefore, we then transmitted back to the Legislature or tabled our report that we were satisfied with the process. That was the thrust of what I put forward.

The Chairman: You said we all have a copy.

Mr Sterling: No, I did not say that. I said I shared it with some members. Because it was Mr Kanter's motion, I had shared it with him, Mr Polsinelli, Mr Offer, Mr Kormos and Mr Hampton. I do not think any of the other members were here when the original discussion was taking place.

My concern in doing what Mr Kanter wants to do is that we are just going to reinvent the wheel. I have better things to do and I think the committee has better things to do. Basically, the motion says we are going to try to do what the provincial courts committee did but with less evidence than it had in front of it. Quite frankly, my attitude towards two days of hearings on a recommendation-by-recommendation basis is I think it is a waste of time, and probably we will not participate to any great extent. We will dissent from any divergence from the Henderson report and just say that our party supports in general the principles of the Henderson report and that we have not had an opportunity to hear all the evidence—something of that nature.

I just wanted to indicate to the committee where we stood. Quite frankly, I do not think that in two days, as are scheduled by the committee, we could do justice in hearing all of the evidence that the provincial courts committee went through. Therefore, I think we are just reinventing the wheel and wasting our time by doing this.

Mr Kanter: I appreciate the fact that Mr Sterling did circulate his motion to several members of the committee. I did advise him that I had some difficulty with his motion. I think this committee was charged with

consideration of the Henderson report. I think we have a duty to do a little more than just transmit it, as I believe Mr Sterling's motion would do. I think we have had several days of oral information. The information we have had has brought forth further questions from Mr Polsinelli, Mr Sterling and others.

I think the information was requested seriously and in good faith. I would like to see the answers; I am sorry we do not have them yet. I would certainly urge members of the committee to support my original motion that would enable us in fact to draft recommendations relating to the Henderson report. I very much regret Mr Sterling's characterization or his suggestion that one of the opposition parties might want to in some way boycott the committee.

The Chairman: I do not think that is what he said. Was that what you said? I did not get that.

Mr Sterling: I did not say that.

Mr Kanter: I think he said he was not sure whether they would participate very fully or at all in the further deliberations of the committee. I think that is part of the responsibility of members of this committee. I think that is part of the responsibility we were charged with by the agreement of the provincial courts committee. I guess I would just say I did not intend to be provocative; I hope that all members would consider, as we have been asked to do the report, that we do it with full information. I would urge members of the committee to support the motion I moved back some time ago, on 23 May 1989. I think that is consistent with the direction we received from the Attorney General and the counsel for the Association of Provincial Criminal Court Judges. I think it is more consistent with the direction that this committee is going.

1550

Mr Kormos: Once again, nobody suggested that the report does not address the issues that the committee was required to address. Surely, after hearing submissions from Mr French and from Queen's Park staff, we cannot come to any conclusion other than that the report indeed addressed all the issues it was required to address.

I have not heard anybody say yet that the committee failed to receive any evidence or data that it ought to have received in arriving at the conclusions it was required to reach. Once again, it would seem to me that in considering the report it would be a matter of trying to determine if indeed the committee had omitted to consider any relevant fact or any relevant consideration. Nobody suggested that and there is nothing apparent in the report that would indicate that.

I have to tell you that my interpretation of Mr Kanter's motion is basically, "Mr Henderson, sorry, so bad, so sad, but we do not like what you did," or "We found what you did to be so grossly incompetent and inadequate that we are going to..." Mr Sterling talks about reinventing the wheel—

Mr Kanter: Are we reading the same motion?

The Chairman: Mr Kormos has the floor.

Mr Kormos: Thank you. The matter of saying to Mr Henderson: "So bad, so sad, but your work was so incompetent that we are going to do it again," as

I started to say, and Mr Sterling talks about reinventing the wheel; I guess any number of little maxims could be applied.

The Henderson committee was appointed at the instance of the government. It clearly did a thorough job. If it is simply a matter of Mr Kanter or other members of this committee not understanding what they are saying, then I presume questions can be put to Mr French again or to government bureaucrats or technocrats or, indeed, to the actuary who was made available, but that was not the case.

There is a request that there be a consideration of salaries and benefits payable to federally appointed judges, and that seems to me to be indicative of the whole quality or rather lack of quality of this particular motion. It was made quite clear that the standard that was being utilized for federally appointed judges was made clear in that regard in the Henderson report and was not one that was going to be a great factor in that committee arriving at its conclusions, among other things because this is a uniquely Ontario scenario. You are dealing with judges who are paid by the province of Ontario. So it seems to me that to accept this motion would be to say as much as, "Mr Henderson, so bad, so sad, but your report is inadequate," or "We doubt the competence with which it was prepared." I think that is unfortunate.

There has not been any substantial criticism of any of the contents of that report, and the report has been thoroughly analysed and thoroughly explained by any number of people making submissions and answering questions before this committee. To request information regarding salaries and benefits of federally appointed judges would seem to be, if anything, a stall tactic because nobody has indicated a rationale for using those as a guideline.

Indeed, that contradicts one of the premises that Henderson established. To draft its recommendations relating to the Henderson report would seem to suggest that it is going to be a chapter-by-chapter or paragraph-by-paragraph consideration and saying "No, we will tinker around with the salaries; we will tinker around with the pensions; we will tinker around with the annual allowances." That is ridiculous.

If Mr Sterling is suggesting that he does not have a great deal of time to concern himself with this, I join him to a large extent in that regard because a committee was paid money and spent a great deal of time considering all of these things. It is not for this committee to do that. It is not for this committee to consider the issues that were the subject matter of the Henderson report, but it is for this committee to consider the report. Is the report a legitimate report? Did it cover all the bases? Did it consider all the appropriate considerations? Did it receive all the available evidence?

Indeed, it would appear that the committee had seen and was aware of the pensions and salaries payable to federally appointed judges, notwithstanding the fact that it did not regard this as one of the basic premises that it had to travel from.

This motion is inappropriate. It will stall or delay the procedure. Clearly, making the recommendation that Management Board made earlier last month was only an interim commitment on its part. That is to say that the purpose of the salary upgrading and the retroactive pays for the two preceding years only could have been for an interim, because it knew the Henderson report was coming to the standing committee on administration of justice and then to the Legislature. The government knew it had to honour an agreement made between counsel for the Association of Provincial Criminal Court Judges

and the Attorney General. I understand there was a subsequent letter from the Attorney General to the judges' association that indicated—indicated? No, it goes further than that— "In case you have any concerns about the fact that it is only me, the Attorney General, committing myself to this, indeed cabinet, through me, is committing itself to this agreement. So I am not going to rely on any little trickery or any little bit of sleaziness by virtue of saying: 'Oh, no, this is only an agreement between the Attorney General and you. It does not affect or control Management Board or the rest of cabinet.'"

One of the comments that was made last time we were here was to the effect that Management Board had already made a decision. How can it have made a concrete, permanent decision, one that was anything other than interim, when it knew that the Henderson report was before this committee, that the government was committed to honouring its agreement and that that agreement meant that after consideration of the report by this committee, the government, upon receiving it, would place great weight on its contents?

The government is not committed to following it or adopting it to the letter, but it is certainly committed to placing great weight on its contents. We have not been able to find anything that upsets, affects or attacks the contents. This motion really contradicts the commitment the government has already made. I guess I would think if anything, the government members on this committee would be loath to move this motion for that very reason, because it contradicts an obligation and a commitment the government has made. I do not understand why the government would not want to follow through on its promises in that regard.

Mr Fleet: The previous speaker, Mr Kormos, has managed to cover a lot of ground, but I really found it quite astounding. He suggested there had been no questions raised with respect to the report, even though that flies in the face of the motion. I wonder if he has read the motion. He manages to imply condemnation of the report on the face of the motion. Of course it is not there and I am wondering what he is dreaming of. He manages to ascribe motives to some members of this committee—

The Chairman: You are not being pejorative, are you?

Mr Fleet: I? I think the bottom line to his comments is that he wants to sort of condemn the government, whether there is any logic in his comments or even any consistency internally in his comments. It made no sense at all.

What is perhaps even most astounding is that he wants to deny that the committee has any critical function when it receives a report, whether it is this report or any other, apparently. I find that incredible, in particular coming from a member of the opposition who, both on committee record and privately, will often say he thinks there are great and positive things that can be done on committee. For a committee to abandon its legislative function, which seems to be the implication of Mr Kormos, is astounding and bizarre.

1600

Mr Kormos: May I respond?

The Chairman: I thought you might want to.

Mr Kormos: That was stupid. That was really stupid.

Mr Mahoney: That is unparliamentary.

Mr Kormos: No, it is to the point.

The Chairman: I am not sure what he was talking about as stupid.

Mr Kormos: I am talking about the comment.

Mr Sterling: Can you put the question? I have to go.

The Chairman: The question has been asked. Shall Mr Kanter's motion carry? Those in favour? Those opposed?

Motion agreed to.

The Chairman: The next item of business is the motion of Mr Runciman.

Mr Sterling: Mr Runciman is going to withdraw that motion.

The Chairman: Right. The clerk indicates to me that the motion was never a motion since all that we received was notice.

Mr Sterling: Because the matter has passed us in time, Mr Runciman indicated to me that he was not intending to introduce the motion that he had given notice to.

ORGANIZATION

The Chairman: I am having the clerk hand out the subcommittee report and we will consider that.

You should all have a copy of the subcommittee report. Any comments, discussion or debate on the subcommittee report and the proposed schedule of meetings, which is obviously going to be adjusted slightly? Oh, they have been adjusted already.

Mr Kanter: Can I just mention something with respect to our next meeting, Monday, 12 June? That is predicated on the understanding that Mr Offer and Mr Hampton will be able to attend and will not still be tied up with the access bill. I think that is Bill 124. It is possible that may have to be delayed for a day or two, but it will certainly be the next item. We are hopeful that we can start that next Monday.

The Chairman: Understood? Is there unanimous agreement to that?

Agreed to.

The Chairman: Any further comment, debate, discussion on the subcommittee report?

Shall the subcommittee report carry?

Agreed to.

The committee adjourned at 1605.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

AUTOMOBILE INSURANCE RATES CONTROL ACT, 1989

MONDAY, 19 JUNE 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

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Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds--Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitution:

Lupusella, Tony (Dovercourt L) for Mr Mahoney

Clerk: Arnott, Douglas

Clerk pro tem: Brown, Harold

Staff:

Revell, Donald L., Senior Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Financial Institutions:

Elston, Hon. Murray J., Chairman of the Management Board of Cabinet and

Minister of Financial Institutions (Bruce L)

Wilbee, James J., Assistant Deputy Minister and Superintendent of Insurance

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 19 June 1989

The committee met at 1540 in room 228.

AUTOMOBILE INSURANCE RATES CONTROL ACT, 1989

Consideration of Bill 10, An Act to control Automobile Insurance Rates.

The Chairman: I recognize a quorum. The Minister of Financial Institutions (Mr Elston) is in attendance and I understand he may have some brief opening remarks.

Hon Mr Elston: Actually, Mr Chairman, I do not propose to say more than that I welcome the opportunity to discuss the bill. I think people know the issue we are really focusing on, which is an interim capping of the rate increases for insurance premiums in the province. Probably our time can be more productively spent if we get right into answering the questions that committee members have of me and my staff. Mr Wilbee, the superintendent of insurance, is here. I think that between the two of us we will be able to address any concerns raised by the committee members.

The Chairman: Thank you. Are there any questions, comments or discussion on any sections of the bill, and if so, what sections?

Mr Kormos: Before we do that, can we be permitted to ask some very general kinds of questions?

The Chairman: Sure. Go ahead.

Mr Kormos: What confuses most of the people across the province is that this particular stage in the whole sequence of events, and I am speaking of people not just from where I come from but of people I have talked to from other parts of Ontario, harks back to April 1987. The minister is conversant with that period far better than I am.

The ministerial announcement of that time, which was a commentary on the treatment of consumers by the automobile insurance industry, was about the proposal for the formation of the Ontario Automobile Insurance Board, along with some very specific sorts of commitments. One was to gain control of the statistical database. Another was to have the OAIB conduct hearings—I appreciate that indeed that process, at least in part, took place—and the establishment of the position of consumer advocate, one that was particularly designed to represent consumer interests during those OAIB hearings. I appreciate as well that the Consumers' Association of Canada was very active during the course of the OAIB hearings, but it remains that the CAC surely was not what was contemplated by the government when it made its announcements in April 1987.

The September 1987 statement by the Premier (Mr Peterson) has made the rounds so often that it has probably been paraphrased more often than not, but it remains that the general thrust of that pre-election statement was that we had a very specific plan. I presume he was speaking of himself and this government; he had a very specific plan to reduce or lower insurance rates. I

appreciate that he did not say "automobile insurance rates," but it was in the context of automobile insurance rates that he made that statement.

Then in the history, which is very brief—we know this but perhaps to put my point in the proper context it should be recited—we have the formation of the Ontario Automobile Insurance Board. We have a board that considered return on equity, basically profitability, before it considered rates.

Once again, we have heard all the arguments in the fine-tuning of the discussion about that, that it was not a guarantee of a 12.5 per cent return on equity but an opportunity to earn that, but it remains that the rates that were proposed by the board resulted in really dramatic increases for most drivers and some very dramatic ones for particular types of drivers, such as young women and seniors. It seems to people that the net result of that, and that is to say the actual filing of rates by the auto insurance companies, is what gave rise to this bill, Bill 10.

Along with that whole history or sequence of events, of course, was the similar commitment in April 1987 to freeze auto insurance rates until the board had an opportunity to set rates. Of course, they were increased by 4.5 per cent and then 4.5 per cent; that is a 9.2 per cent compound increase. There now is a proposal from the government to increase those rates by 7.6 per cent. The things that—

The Chairman: I just want to be clear. Are you making a statement or are you asking the minister a question?

Mr Kormos: This is a question, but it has to be put in context, please.

The Chairman: All right.

Mr Kormos: The interesting thing about the act is that section 10 of the bill suggests it is going to be repealed on the earlier of "the 31st day of December, 1990;"—so we are talking there about a year and a half down the road—"or a day to be named by proclamation of the Lieutenant Governor," which means this increase could be a very short-term one.

The question, and why I generated a little bit of background, is, how does this fit into the plan, as outlined in April 1987 and subsequently, apparently confirmed in September 1987 by the Premier when he said he had a very specific plan to reduce, presumably, auto insurance premiums? Where does this fit into that scheme or that sequence of events? Is this part of the plan? Is this part of the plan that was initiated in April 1987 by the ministerial announcements at that time? That is the question.

Hon Mr Elston: It is an interim step, as has been indicated, and it is taken with respect to establishing rates while we consider a series of proposals being put forward by several people during public hearings, about the need for comprehensive action with respect to costs of insurance and whether or not there are better ways of putting in place the delivery of insurance products. I think the honourable gentleman has been right to ask the question. It happens to have been an interim part of an overall drive towards product reform and the better provision of insurance services for the public.

The Chairman: Do you have another question?

Mr Kormos: Yes.

The Chairman: Then Mr Runciman.

Mr Kormos: I will defer to Mr Runciman.

Mr Runciman: I guess the subcommittee has taken up the question of witnesses and determined that it is not going to be calling any witnesses.

The Chairman: There are only two I can indicate to you who have expressed an interest. Interestingly enough, one of them was a call from a fellow in my riding, but the clerk and he were never able to get together on the issue. The second one was a letter—did I not get a letter?

Clerk of the Committee: A phone call.

The Chairman: Another one was a phone call as well. So there has not been a great interest expressed.

1550

Mr Runciman: Mr Kormos has a proposal that he is making afterwards, which I will be supporting, with respect to at least one witness who should be appearing before us.

Mr Chairman: Can you give us some idea what that proposal is?

Mr Kormos: Sorry to interrupt, Mr Runciman, but I have prepared a motion that I will be moving at the appropriate time. I am giving you the original and copies of that.

Mr Runciman: With respect to Bill 10, I would like to ask the minister or Mr Wilbee to provide us with some background about the decision-making process involved with respect to this piece of legislation and the government's panic decision, as I have described it, concerning the fact that rates were being filed that were causing some concern in political circles.

I would like to know how the minister and his staff arrived at the 7.6 per cent figure and how this is related to adequacy in terms of the whole range of companies offering auto insurance in the province. Also, to tie it into some of the concerns that are now being raised with respect to companies like Prudential of America General Insurance Co and others that are simply not offering auto insurance in selected areas of the province. Perhaps the minister could talk a little bit about the decision-making process and the fact that we got so far down the road on this thing before Bill 10 was brought in. Perhaps he could address the 7.6 per cent figure as well.

Hon Mr Elston: Regarding the issue of Bill 10 and when the decision was made, basically, it came together as we worked as a ministry on policy and otherwise, examining what was being put in front of the Ontario Automobile Insurance Board and the suggestions that were made about what has to be done to comprehensively address difficulties that were seen for some time in the insurance industry.

Basically, it was not a panic decision as the honourable gentleman indicated, although I am very loath to disagree with my colleague from the

class of 1981. We do have minor disagreements as to interpretation of material from time to time.

We had indicated that we were very much interested in the reform of the product delivery and the product itself. From that standpoint, it did not make as much sense to go forward with implementation of the plan as deliberated on by the board. We felt in the circumstances that the benchmark reflection of the board's decision, the 7.6 per cent increase, would be one that we could use as the basis for capping of rates in the industry. It was a very deliberate, studied move on our part, and the 7.6 per cent really comes from the benchmark issue developed by the board.

Mr Runciman: I would question how deliberate and well thought out this was. The 7.6 per cent certainly was a benchmark, but there was the flexibility above and below that benchmark that could address the requirements of individual firms and the fact that perhaps they had not received adequate increases in the past. Simply having this flat figure does not recognize those differences between companies. There is no flexibility, I gather, built into this legislation to allow for that sort of consideration. I have some difficulty with the suggestion the minister is making, that this was a well thought out act on the government's part.

I guess I have said this in the past, and the minister has disagreed with me in the House, but having gone through the Bill 2 process and having witnesses appear before us ad nauseam, talking about the changes in the new class plan that the government brought in and that those changes were going to result in significant dislocation, increases in the magnitude of 80 per cent or 90 per cent—we had a couple of consulting firms well paid to tell us exactly that.

I guess I had difficulty letting this whole thing go to the last hour and then, after insurance companies had spent millions of dollars, after the auto insurance board had spent millions of dollars, for the government, surely for political reasons, at the last minute to overturn all of that, is a concern of mine and a concern of a great many in this province.

I would like to know about the cost to the insurance companies. Has the minister spoken to insurance companies since his decision to bring in Bill 10 with respect to the kinds of costs they have incurred and if indeed they have suggested ways in which these costs may be recoverable?

Hon Mr Elston: Some of the insurance companies have suggested there are some costs they would like to see recovered out of government, but they have not been surprised by the fact that I was not sympathetic to that. Not very many have asked for those recoveries. Most were pleased we moved to hold implementation of the class plan until we had deliberated and made a determination with respect to the product that would be put in legislative form for delivery.

The fact that we are deep into discussions about that now and await a report from the OAIB on its hearings on the versions of no-fault referred to them was an indication that to implement a plan that could be undone by product reform later on meant those costs would be substantially higher than if we took the steps we did. So I can tell the honourable gentleman that certainly some people have asked that I reimburse them, but very few. In fact, I do not think the request was made in a very serious vein, at least by a

couple of people I talked to. Some of them, I presume, are quite serious about that.

Mr Runciman: I saw an article in the media, I think this morning, that insurance companies operating in the province are in violation of the law, pending passage of Bill 10, with respect to nonimplementation of the new class plan. I assume the minister and his staff have no intention of taking action in that respect.

Hon Mr Elston: I am sorry; I was distracted there for a moment.

Mr Runciman: I am talking about the article in the media that insurance companies are violating the law because of their failure to apply their policies with respect to the new class plan simply because of the fact that Bill 10 has not yet passed. I am assuming the government has no intention of taking action against those companies.

Hon Mr Elston: I think a commonsense approach is required here. The bill was in the House and the expression of our intention was well made in April. Basically, it would be a little difficult to prosecute people who were waiting for this bill to come forward in line with the policy of the government.

Mr Runciman: I am glad to hear that. That is refreshing, common sense applying to the auto insurance policy in this province.

I wonder if I could direct a question to Mr Wilbee. There are some rumours floating around, which relate to this bill and to product reform, that he has been given some new responsibilities with respect to dealing with the selling of product reform or whatever product reform recommendations come forward from the government. Is that an appropriate question?

Hon Mr Elston: I do not think it is from the point of view that we are dealing with the rate under our current situation, but in terms of new responsibilities for selling product, the minister is going to be responsible for those in any event.

The Chairman: I think if it gets to be a matter of policy, it is unfair to put the staff in that position, Mr Runciman.

Mr Runciman: Okay. I will give up the floor for the moment.

Mr Kormos: The minister surely is aware of the types of rate proposals that were submitted by insurance companies pursuant to the new classification scheme and the standards cleared by the OAIB. I can only presume they were so completely above the benchmark—that is to say they utilized not only the benchmark but the plus 10—that this is what would prompt the government to discard the classification scheme at that stage in the game and embark on Bill 10 as what it calls an interim measure.

Hon Mr Elston: Actually, I think there were three things that came together. There was the benchmark and there was the nine point whatever per cent there was on top of that, plus there was the implementation of the class plan all coming together at one time, which added up to a fairly large increase.

In addition to that, there were our advances made with respect to policy study of product changes and the opportunities for us to come up with new

product delivery that caused me to move with Bill 10 and use the benchmark for increases while we made final decisions on the new product reform opportunities.

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That is the context in which the decision was made. If we were not working, I guess, on any reform of the system at all, we probably would have not had the same parameters within which to make the determination that it seemed a little unreasonable for us to proceed to implement a brand-new class plan plus benchmarks and other increases on the system. If we were not going to change the system, then we would let it go ahead, but if we were going to change the system fairly soon, then it seemed to me to be reasonable to come in and do an interim step while we deliberated on the product.

Mr Kormos: Does the minister share with me the view that there is a crisis in the province with respect to automobile insurance? I am speaking not only of affordability but of availability.

Hon Mr Elston: No, I think that is not true. It is not fair to call it a crisis at all. I think if you took a look at what is happening in California and in some of the US larger urban centres, you could talk about a crisis where some of the products are being sold at US\$2,500 and upwards to people who have never had any convictions, claims or any of that sort of thing. In some of the places down around Los Angeles, I understand \$5,000 and \$6,000 are not unusual. In relative terms, when you compare our prices for product with those, we are not anywhere close to a crisis.

What is disturbing to people in the province is that there was a tremendous increase in price from one year to another before the implementation of the first of a series of (a) freezes and then (b) 4.5, 4.5 and now 7.6 per cent increases. Prior to that, that was the problem. That was the reason for concern, particularly for those people who had not seen themselves as driving poorly, which was evidenced by no convictions and no claims type of things.

Mr Kormos: The minister used strong language to describe the conduct of Prudential last week. Granted, Prudential backed off really fast. Prudential was trying to set its own ground rules for who will or will not get insurance. Is the minister not aware that there has been an increased number of referrals to Facility Association across the province?

Hon Mr Elston: Yes, there has been an increase of referrals. I think for private passenger we are probably looking at somewhere around 3 per cent to 3.5 per cent of the insurance being in the Facility. That is my most recent information.

Mr Kormos: I wonder how recent that calculation is.

Hon Mr Elston: Fairly recent. I do not know. When was the last report on that, Jim?

Mr Wilbee: We did have a report in May but, unfortunately, we have to infer the figures because the information we get from the Facility really just talks about new people being written. So not knowing who cancelled, we are subject to trends. We are having the Facility prepare a totalling-up figure for us, but based on the figures we have, it looks like it is somewhere in the 3 per cent to 3.5 per cent range in the Facility now.

Mr Kormos: My concern about the figure that the minister just gave is that I contacted the superintendent of insurance's office with a view to being told what the increase in coverage by Facility Association was, and I was told basically what the superintendent told us now, that until the new calculation or analytical system is in place, it is really difficult to tell.

I suggest to the minister, if only anecdotally, that what he has seen, perhaps by calls to his own office, calls to the superintendent's office and calls to the Ontario Automobile Insurance Board office, is that there has been a dramatic increase in the number of persons referred to Facility, and the increase is not necessarily to be reflected in bad drivers but rather in good drivers who simply are not able to get insurance coverage from other sources. I wonder if the minister could comment on that, if only from an anecdotal source.

Hon Mr Elston: I am sorry. I was busy cleaning up this glue or whatever it is here. Repeat that, please.

Mr Kormos: Surely the minister is aware of the calls that all members have received, the letters, phone calls, contacts with members, the office of the superintendent of insurance, the Ontario Automobile Insurance Board, from what has to be thousands of people; or at least, it demonstrates that there have been thousands of people who have been denied renewal of their policies or, because of a hiatus from one cause or another, have been denied new insurance coverage.

These people are being referred to Facility. I suggest to the minister that there is no consistency from one to the next. They consist of good drivers, almost-good drivers, as well as the traditional bad driver. I suggest to him, and I wonder if he would comment on this, that the Facility Association has never seen such a big influx of people who traditionally would be insured by regular insurers.

Hon Mr Elston: I think the Facility is increasing; there is no question about that. When you say it has never seen so many, I would have to agree with you, because the Facility has not been this high traditionally.

You asked if this is a crisis. I said no, this is not a crisis. There is a difference of opinion on that perhaps. A 3.5 per cent Facility may be a crisis in your view. I do not see that as a crisis.

The issue of the tightening of the market, the stress, I guess, on some insurers while they wait for our product reform is clear, but I do not see that as a crisis.

Mr Kormos: I am going to address that further, but now that the minister talks about the wait for product reform, the minister is aware that counsel for the Ontario Automobile Insurance Board expressed some serious doubts as to whether or not the proposed reforms would constitute any saving for drivers. Can you comment on that?

Hon Mr Elston: No. I think he is free to comment in the public hearings. I do not have the report from the board. I will see what the board writes to me. I think it is a little premature for you to ask me about that, particularly when we are dealing with a bill that talks about rate-capping.

Mr Kormos: I understand that. The reason I wanted to interrupt what I was asking was that the minister brought up the matter of "How can it be a crisis when all we are doing is awaiting product reform?"

Hon Mr Elston: No, I just said that I do not agree with you that there is a crisis. I said that there is stress in the marketplace while people await the product reform. That is another issue to talk about. It will generate a lot of discussion. A lot of policy issues are there. There is no question about that. But the views of the counsel to the OAIB are not, it seems to me, germane to the current topic that we are on, that is all.

Mr Kormos: The minister knows or should know that brokers, when they write to people, are telling them that insurance coverage is no longer available through their traditional insurer, but they have found alternative coverage for them and the cost is X dollars. It is inevitably a four-digit price. It is inevitably above \$2,500, but it appears to range from around \$2700 up to \$3500.

The impression that is distinctly given to drivers when they receive these letters from their brokers is that their brokers have alternative insurance, because that is what it says. The letter inevitably does not indicate that what they have done is to get coverage through the Facility Association. I am told by the superintendent of insurance that his office considers that acceptable on the part of the insurance brokers. I am wondering if the minister considers that acceptable.

1610

Hon Mr Elston: I think that all of the people who are in the brokerage business that I have talked to, particularly around that issue, have indicated to me that they generally try and tell their people right up front how they have their material in place. It is their duty to inform, and I think it is fair to believe that happens most of the time. The preamble to your interrogatory, however, suggests that is happening all the time, and I think that is unfair because I know it is not happening all the time. I know that the people are not writing letters that say they inevitably move from \$2,500 to \$3,300.

The way you have cast your specific examples, and you will have more than one of those I know, does not mean that it applies to 6 million policies of insurance in the province. I think you should express the issue as having examples of that occurring, where people have not been informed, that in fact it has moved to four-digit premiums. I can accept that. I do not doubt that that is happening.

But you cannot say to me that when a broker sends a letter it inevitably moves people into a four-digit premium and invariably goes up over \$3,000. I think that is stretching it just a little bit. I will agree with you that that has probably happened in some cases and I am sure the record would be quite happy to receive your examples.

Mr Kormos: The minister knows that I have already cited to him examples of that at various points over the last couple of months, and indeed have given names, dates and places. The superintendent of insurance told me when I made an inquiry about that several months ago that there was nothing he was prepared to do about it, but hope was just around the corner because the new forms going to be used under the new classification scheme were—

Hon Mr Elston: Excuse me, it concerns me that you said that several months ago you did this. Can you be more precise? Was it in April or February?

Mr Kormos: Obviously it was after February because it was after the board announced its 13 February increases.

Hon Mr Elston: So was it into April?

Mr Kormos: Let me finish because this is interesting.

Hon Mr Elston: No, I want to nail this down. You said "several months ago." When you start talking about several months ago, I start to reflect back that you somehow, six or eight months ago, said this was happening. I want to be sure that we can track it down.

Mr Kormos: Gosh, Mr Chairman, I was not here eight months ago.

Hon Mr Elston: Okay, but as a matter of precision, though, it is of interest to me so that we can make sure we have replied to all of your interrogatories.

The Chairman: Can you perhaps make the minister aware of that later on, if you cannot think of it right now?

Mr Kormos: Yes, but more important, I was told that the superintendent of insurance believed—and I have every reason to believe them in this regard—that the new forms going to be used when the new classification scheme goes into effect would contain that type of information, that is to say, whether or not somebody was being insured by a regular insurer or by Facility Association. That was one of the reasons why the superintendent of insurance's office felt that the matter was not of as much urgency—that is the impression I got—as it would have been otherwise.

It remains now, though, that the new classification scheme and its new forms are not going to be put into effect. What I am wondering is simply this: Is the ministry prepared through its superintendent of insurance to establish—and I appreciate that not every broker and not every broker's letter neglects to outline that what has happened is that you are stuck with Facility Association.

Hon Mr Elston: But you are suggesting in general that is the case.

Mr Kormos: I am suggesting that it happens more than occasionally, and in view of that, would the minister be prepared through his superintendent of insurance's office to establish as a standard that that type of disclosure be made available by brokers when they are referring people to Facility?

Hon Mr Elston: I have no problem speaking with the brokers personally and saying that it is an impression created by your interrogatories today that brokers in general do not tell their clients about the Facility involvement. In fact, they ought to, and I think the brokers' association and those working with brokers would probably undertake some remedial activity if that was not sufficient to deal with the issue of consumer advice. I am certainly all in favour of telling people whether they are in the Facility or not in the Facility. If needs be we could look into what further steps need to be taken.

Mr Kormos: The minister knows this. He and I have talked about this before. Where he comes from, brokers apparently handle more companies than where I come from. The brokers down where I come from handle maybe two or three insurance companies. Be it fewer, be it more, the fact is that they do not handle the whole range of insurers available to an insured party. Most brokers are disinclined to refer a customer to another brokerage because, once gone, it will be a long time before they get them back.

It is that omission on the part of brokers that sometimes deludes consumers into believing that they have been exposed to the whole range of insurers and that this is the best they are going to get. Obviously, the failure to identify the source of coverage as being Facility Association results in that driver, that consumer, not shopping around, not going to other brokers and seeing whether there are other insurers who are prepared to take that person's coverage, to write him a policy.

What about this scenario? I am speaking of the insured person who has a number of claims, not necessarily claims to which fault can be attributed. I am speaking of the type of claim you get when your car is dented or dinged in the parking lot or when you get a radio stolen or the canvas top slashed. You make one, two or three of those claims, and the insurer says: "Thank you very much. As a result of your claims history, we're telling you that we are no longer going to renew" or "We are no longer going to cover you, which means we are not going to renew your policy when it comes due in August 1989."

I set out that background because drivers have expressed to me the concern, basically, that if they had known that third or fourth claim was going to result in nonrenewal of their coverage, they would have absorbed the loss. They would have become self-insured for but the briefest of times. I am wondering if the minister is aware of that phenomenon and whether he is as concerned as I am about the fact that insurers are not telling their customers "Three strikes and you are out."

Hon Mr Elston: I do not think necessarily that it is just as sure as you are putting it. I do not doubt that the scenario you set up has happened. I believe that in fact your circumstances are based on real case material, but the generality of the application concerns me.

If people have claims or if they have convictions as drivers or whatever, then I think they will have to be prepared for adjustments in premiums paid or otherwise, because there are costs incurred with respect to payments of claims, no matter how called.

I cannot really speak to the issue of whether or not a company should say to somebody, "Gee, if you have three claims, we are never going to write you again," in the sense that I do not know the basis upon which that was given to your example, to the case you are referring to or otherwise.

The thing I have to do is look to each particular case where there is a decision not to write on the basis of the facts that are present. I can deal more specifically and better with each of the cases as opposed to dealing in generalities with suppositions that are, no doubt, based on real circumstances but upon which I have no ability to reflect with the degree of detail that I need to check into to see whether or not they were correct.

The Chairman: Mr Kormos, I just want to get some idea of how long you are going to be questioning the minister. As you know, there will be a vote some time today, which we will be called out to do. I notice you have your motion here. You want Mr Kruger to attend before the standing committee on administration of justice. As I am sure you are aware, we have only two days set aside for this bill.

Mr Kormos: I should tell you I called Mr Kruger's office before I drafted the motion, just to make sure he would be in today and tomorrow. By the will of God, he is going to be here in town tomorrow and available, as I am told by his staff.

1620

The Chairman: Okay, but the difficulty that that encompasses is that if we were to hear Mr Kruger tomorrow, you would obviously want to hear Mr Kruger before we started into clause-by-clause of the bill. I just want to be clear because we do have a matter that was scheduled for this week. It was the Henderson report and we have put that out of the way to do this. Hopefully, we are not going to spill into another week. Maybe you could give me some idea of what your plans are.

I am sorry, I was mistaken. It was next week that we were to return to Henderson. But we would delay that if we had to continue with this next week.

Mr Kormos: You mean the Henderson report is to be considered next week?

The Chairman: Next week, yes, but if we spill into—

Mr Kormos: I am shocked then that I heard you last week indicate that the Henderson report was scheduled to be—

The Chairman: Well, I was just corrected by the clerk. I make mistakes from time to time; not very often, but I do sometimes.

Mr Kormos: It is incredible that one only acknowledges them after being reminded by others, though. The critic's role is important, is it not?

The Chairman: It certainly is.

Mr Kormos: If we can, what is the chairman thinking of then in terms of agenda.

The Chairman: I am not thinking of anything. All I want to do is find out whether you are going to continue all day asking questions or whether we are going to get beyond that. That is all I want to know.

Mr Runciman: Can I interject? I do not foresee clause-by-clause being a lengthy exercise. I know that our party has no amendments that we are bringing forward in the bill, so I think it would be worth while, if indeed the support is here, to hear Mr Kruger. His board is mentioned throughout the bill. They do have a role to play; certainly they had a role to play leading up to this bill.

Mr Kormos: I should add to that, and I certainly cannot speak for Mr Runciman but hopefully I can speak for myself, that Mr Kruger is essential to a consideration of this. Whether or not Mr Kruger is to be here would undoubtedly affect the sorts of things that I would be inclined to ask the minister. If I knew that Mr Kruger was going to be here, then there would be a whole pile of things that I would not have to ask the minister about. So maybe it is timely to interrupt. Could we have two minutes, please, to indulge me?

The Chairman: We will go to Mr Runciman, but I wonder if we could maybe deal with speaking to the motion because that would determine where we are going next.

Mr Runciman: I hope, Mr Chairman, you are going to show some flexibility with respect to this issue. You may not believe that some of the questions that are coming forward are related directly to this bill, but I

think in many respects they are. I know that Mr Kormos was talking a bit about Prudential General and Facility. I certainly think those are important questions and very much related to Bill 10.

The question was raised about whether or not there was a crisis, and the minister indicates he does not believe there is. I guess I would share that view, but I am somewhat concerned about the Prudential General move announced a week or so ago, not only the fact that we are seeing this sort of action being taken by insurance companies, but also the fact that the minister seemed to be caught off guard by that announcement, very much surprised.

He indicates here that he is quite confident that we are not going to get into a crisis situation. I wonder about that, based on the fact that, obviously, his ear to the ground, his pipeline perhaps is not as effective as we would like to see it. I am concerned and I would like to hear the minister's comments and perhaps Mr Wilbee's with respect to what is happening out there.

We have seen Prudential General and we have seen a number of other companies which have indicated that they are simply not going to write auto policies in certain areas of the province. What is the likelihood that we are going to see more and more of this in the next couple of months?

Hon Mr Elston: The issue of availability is always a concern to us. There is no question that under the current circumstances some companies are less willing to take new business. That is what has been talked about by a good number of them, that they are not going to be taking new business. A very small number of players in the market have ceased to take business at all. But most people are being very careful about new business until they are aware of how far our policy deliberations have gone with respect to product.

It is in that line that I think the issue of the taking of new business could be a bit of a concern to us, and it is a concern to me that there is some stress in the market. That is not a surprise to anyone.

On the issue of whether a particular company has to come to me with all of its proposed announcements, it should be clear to the members here and anybody else who wishes to read this transcript that I am not a member of the board of directors of any of the companies in my role as Minister of Financial Institutions. I do not preclear their statements to the public. I receive a good number of their releases at the same time as the general public, so when they make some kind of what I believe to be socially unacceptable announcements about what they will do or not do for families in the province, then I react. But I am not privy to their business decisions and I do not think it would be appropriate if I were.

Mr Runciman: The dilemma I have with what you are saying is that, on the one hand, you are expressing confidence that the problems with respect to referrals to Facility, availability, and so on is not one we should be overly concerned about. But at the same time, you are suggesting that you or your officials are really not privy to the kind of thinking that is going on out there in corporate boardrooms with respect to whether or not they are going to continue to offer auto policies in certain areas of the province.

I wanted to draw to your attention and to anyone who pays attention to these hearings that perhaps you are being overly confident. Again, I hark back, and I have done this on other occasions, to the Massachusetts experience; which I think is comparable in many respects—I know you

disagree—with something like 60 per cent in Facility the last time I looked.

Another aspect of this, minister, or I would like to hear Mr Wilbee's comments, is how much re-underwriting is going on? I am getting a few comments with respect to that. Although insurance companies are restricted with respect to the cap this legislation places on them, they are going back over their files and records and perhaps finding a fender-bender that occurred a year or two ago and looking at justifications for re-underwriting. I must say I am not being inundated with calls in that respect, but I have had a few concerns expressed in my office.

Hon Mr Elston: There is what is sometimes described as cleaning up the books of business, looking to having updated information. I think the process actually started to occur even before the decisions related to the auto board hearings were rendered in February. People wanted to be sure their information was accurate and complete in every way. That had started some time ago. It is continuing and I do not doubt it will be continuing on through as people strive to have the statistical data at their hands to be able to really verify what the cost of running the business is. I know it is happening; to what degree, I am not absolutely certain either, but I do know it occurs.

Mr Runciman: Going back to a lot of referrals to Facility and Mr Wilbee suggesting that the last statistics are—I have the ones you quoted—three to 3.5 per cent based on some figures you had in May, what is the reporting relationship there? Do you or your officials have weekly contact with the Facility Association? What kind of reporting relationship exists?

1630

Hon Mr Elston: We used to get reports that talked about monthly figures. Those are the ones I see, in any event. I do not think people can get weekly figures because of the way in which data comes in and is collected. One of the things we had wanted to do with respect to the board hearings and otherwise is get a better handle on the statistics that are the backbone of insurance writing. I think we will probably clear up some of those difficulties and perhaps improve our reporting mechanisms. For instance, I think the last time I saw a report, we were dealing with figures for which there was about a six-week time lag, and maybe even further than that. I am not certain. We cannot be absolutely certain right today exactly what the status is, because there is a reporting relationship which is slightly removed from us at this point.

Mr Runciman: Do you have any view in government with respect to what is an acceptable level in Facility? Is there a certain percentage or a certain number of drivers who are compelled to look to Facility for auto insurance which in the view of the government would be unacceptable? Do you have any kind of goal or target or ceiling you would not wish to see surpassed?

Hon Mr Elston: Actually, my measuring technique is more qualitative than it is quantitative, if I can put it in those terms. I am worried about the good drivers that the member for Welland-Thorold (Mr Kormos), for instance, mentioned before, who are being moved to Facility. There are a huge number of those people. I am a lot more concerned about that question of availability than I am about the absolute number. I am sure none of us would want to see Facility end up taking all the insurance coverage, but I can tell you that I have not sat down and said: "Gee, I think I'll set the target at five per cent Facility and not move beyond it." I just have not done that.

What we have been doing is looking at product reform in the implementation of the current act we are talking about as being the paramount requirement, believing that good drivers and others will be better served by having product reform and having an assurance that we are looking to the overall issue of providing a reasonably priced product for them in a reasonable manner.

I do not have an upper level, but I do have concerns about which I am sure all three of us—you two as critics and myself, all three parties—would agree, and that is that a large number of what people would call good drivers are being dropped in there.

Mr Runciman: Product reform is restricted to the matters that were before the board the past month or so?

Hon Mr Elston: You mean in terms of products that are possible?

Mr Runciman: That are being considered.

Hon Mr Elston: The policy unit of the ministry, of course, is in charge of looking at casting a net over the various products, and we have been examining all sorts of options that are available to us. The issue of the ones we prefer—

Mr Runciman: Why was the board so restrictive in its deliberations?

Hon Mr Elston: The board was restrictive because that was how the order in council was structured and because we were interested particularly in those variations of no-fault product delivery. They were set out as providing us with some opportunities. The choice model, as you know, has been brought forward from time to time. We know thresholds have actually been implemented in some of the jurisdictions in the United States, and we wanted to take a look at those and the public issues that surround those to help us out in arriving at a final decision with respect to our analysis.

Mr Runciman: So the board has not made a recommendation to the government? It simply provided you with—

Hon Mr Elston: The board does not make a recommendation. In fact, they have not made their report to us either. When they make that report to us it will not be—at least that was not what was asked for—a recommendation of anything but should be a listing of the merits and the problems associated with the variations of no-fault that we referred to them for hearing.

Mr Runciman: I have a further question before I defer to Mr Kormos. In the policy deliberation process within the ministry—I do not know how to phrase this—has anything been left out? What I am specifically looking at here is: Has the ministry also been looking at the feasibility, desirability of the government's assuming the responsibility for the provision of auto insurance?

Hon Mr Elston: The emphasis we have been putting on the product right now has been private delivery. Clearly, the issue about the variation to a public model is in the background, but our efforts are really with respect to private delivery.

Mr Runciman: When you say "in the background," it has not been neglected totally.

Hon Mr Elston: No, because we have various examples of public insurance involvement, in British Columbia, Saskatchewan, Manitoba; Quebec also has a variation. They are known to us and they are in the background, but we are spending most of our time analysing the various options in relation to the private delivery system.

Mr Kormos: As you know, Mr. Chairman, I had to leave briefly. Before I left we were talking about the matter of the motion.

The Vice-Chairman: Are you moving the motion?

Mr Kormos: As I explained to you before, I am trying to decide whether we should rely on the minister's presence only as a source of some information or whether we are going to be able to have the opportunity to talk to Mr Kruger. As Mr Runciman pointed out, a section-by-section and clause-by-clause consideration, in itself, should not be a lengthy task.

The Vice-Chairman: Are you asking a question now or are you moving the motion?

Mr Kormos: Please, if you hear me out, I can get the guidance from the chair that I anticipate I will get. What I am suggesting is that I am prepared to move and have this committee consider that motion, if that can be done, understanding that regardless of—I hope the motion will be accepted. I think it is a sound thing to do, but we can only turn to the minister. By moving the motion now, I do not want the chair to take it as my saying: "Fine, those are all the questions I have for the minister. We want to move on to the motion."

As I say, if the motion is granted, it will certainly diminish the number of questions I would have of the minister. That is why I am asking for some direction from the chair. If the chair would permit the moving of that motion, recognizing that for me to move that motion does not constitute—

The Vice-Chairman: If the motion were moved, whether it were successful or failed, you would still have the opportunity after that to ask questions in the normal course.

Hon Mr Elston: If I could, I am here for the two days anyway, and I am certainly not going to run away because you do not have questions for me right at the moment. I am available. My bill is in front of you, and if you want to deal with the motion now, I am not going to leave and say, "Gee, they didn't have any more for me." I am quite available.

Mr Kormos: That is good to hear. I think that would be a good thing to do. The motion has been distributed, and I am moving the motion that has been distributed.

Mr Lupusella: Before you move this motion, I would like to ask a question.

The Vice-Chairman: Are you asking a question of the minister?

Mr Lupusella: No, to Mr. Kormos.

The Vice-Chairman: Through the chair, certainly.

Mr Lupusella: Of course. In relation to the content of this motion, .

considering that this committee is dealing with a bill which gives certain powers to the board, and Mr Kruger eventually is going to get certain authorities as a result of the passage of this bill, why do you want him to appear before this committee?

Mr Kormos: I do not understand the question Mr Lupusella asks of me.

Mr Lupusella: I do not understand your motion. Why would you like Mr Kruger to appear before this committee, when this committee is dealing with a legislative bill?

Mr Kormos: That is precisely why I started moving the motion, so I could speak to it once it is moved and on the floor. If Mr Lupusella pays heed, he will find out why I am doing such a thing.

The Chairman: Mr Kormos moves that John Kruger, chairman of the Ontario Automobile Insurance Board, be called upon to attend before the justice committee during its consideration of Bill 10.

Do you wish to speak further to it?

1640

Mr Kormos: Please, Mr Chairman.

The Chairman: I thought you had spoken fairly extensively, but go ahead.

Mr Kormos: Not with respect to the motion. What we have here is a bill that appears to have been unanticipated at the outset. It has become part of the process, but clearly, by its very nature, it was not anticipated—

The Chairman: Go ahead.

Mr Kormos: He cannot complain later that he does not understand why I moved the motion; Mr Lupusella. In any event, although it has become part of the sequence of events rather than a process, this particular bill clearly was not anticipated. It is something that interrupted what would have been a course of events that were at least in part announced back in April 1987. We are talking about the OAIB's consideration of a new classification system, its consideration of a standard for profitability, a return on equity, and its consideration of a rate or range of rates.

The board was to have been final in that decision. That was the power given to the board by the Ontario Automobile Insurance Board Act. Indeed, a number of statements made by various government members in the Legislature made it quite clear that the government regarded that board as independent and final in its authority. By virtue of Bill 10—You see, Bill 10 does not just grant a 7.6 per cent increase; Bill 10 does a lot more than that. One of the things Bill 10 does is say that section 33 of the OAIB Act ceases to have effect until a day to be named by proclamation of the Lieutenant Governor.

As I say, Bill 10 does not grant just a 7.6 per cent increase. It fundamentally interferes with the operation of the OAIB Act and the role the OAIB takes pursuant to that legislation. Bill 10 is clearly an interruption of the process that was started with the OAIB Act. It generated some real controlled but concerned comments by Mr Kruger. Bill 10 obviously has concerned the insurance industry, because it has not been pleased with it and with the interruption of the process that was initiated with the OAIB Act.

Mr Kanter: Are you an apologist for that industry?

Mr Kormos: You are right, we get campaign contributions from trade unions.

The Chairman: Let's not get into that, thank you. Question period was—

Mr Kanter: You just seem to be very concerned about the industry reaction to this.

Mr Kormos: I am pleased to act in the interests of trade unionists. We know government members get campaign contributions from the insurance industry, among other places.

The Chairman: I think you are straying from the subject at hand. You are getting a little Starry-eyed.

Mr Kormos: I am sorry, Mr Chairman. I was interrupted. Mr Kanter got me off on a tangent.

The Chairman: I do not see this as a terribly difficult motion to deal with. We had agreed that we would consider calling witnesses. Maybe we could take a straw vote.

Why don't I ask one of the members from the government to speak? Then we can get some handle on whether you have to go into a great discourse and, through your eloquence, persuade the other members of the committee.

Mr Chiarelli: Just by way of clarification, I think we should establish that if in fact we do agree to have Mr. Kruger come before the committee, we are still adhering to our two-day allocation for this particular bill, because there is a full agenda. I do not want the fact that we have agreed to have him come here be taken in any way as extending the number of days or the time the committee is going to be dealing with this bill—

The Chairman: I think Mr Runciman has already indicated that he does not see any difficulty. Perhaps if we could have Mr Kormos's agreement that we would not spill this over to additional days, then Mr Chiarelli has indicated—and I do not know whether the other committee members are agreeing with him—that they might support your motion.

Mr Kormos: I do not anticipate any difficulty.

The Chairman: I would say "anticipate" is an anticipatory word.

Mr Lupusella: If I may, I would like to express some concern about this particular motion. Even though in theory there is nothing wrong with Mr Kruger appearing before this committee, I am still convinced that we are dealing with the legislation, and in the final analysis the minister is responsible for this legislation. He is the only person who can easily reply to the particular concerns that might be raised by the members of the opposition party. I really do not understand the usefulness of the chairman of the Ontario Automobile Insurance Board appearing before this committee when in fact the minister can provide this committee with all the answers that would be required if questions are asked by the two opposition parties.

The Chairman: I am not sure I have any clearer idea of whether your motion will be supported yet.

Mr McGuinty: I would raise the question of what substantive information we might anticipate Mr Kruger would provide which we do not already have in hand. Second, I think that if we were to agree to this, logically perhaps we should have a representative from the industry and then a representative from the consumers' association. Really, I do not know what they would provide in addition to what we already have in hand. Unless Mr Kormos could apprise us, I really cannot see what he would expect Mr Kruger could tell us that we do not already know.

Mr Runciman: We have only had one request, certainly from the opposition parties, and I support Mr Kormos on this. We have not asked for the consumers' association or industry representatives and they have not contacted us with any expression of desire to appear before the committee.

Mr Kruger is appropriate, in my view, if you look at this legislation and look at the numerous references to the responsibilities that involve the board in respect to ensuring compliance and so on. I think it is appropriate that the chairman of that board make an appearance, because certainly, as Mr Kormos made reference, this legislation has a significant impact on the legislation establishing the board itself and certainly has an impact on the so-called independence of the board. The government's initiative in respect to this legislation before us certainly gutted whatever independence the board had.

I think it is very appropriate that the chairman appear before us and we talk about the board's response and reaction to this legislation, how it has impacted on the operations of the board and how it is likely to impact on the operations of the board in the future. I think we are going to get some straight facts from Mr Kruger. I have been on committees where he has appeared in the past. He is a very frank fellow and I think it would be most helpful to us.

Certainly I am prepared to commit on behalf of my party that we will not go beyond the two days. As long as there is some sense of fair play in terms of questioning and allocation of time, I do not see any problem at all.

Mr Kanter: Members on this side of the committee clearly think for themselves on this, as well as all other issues. I would just like to indicate my views on this matter.

I agree with what Mr Chiarelli has said, that providing this matter is completed in the time frame agreed upon by all parties, I would have no objection to Mr Kruger being invited to appear tomorrow. I appreciate Mr Runciman's very specific understanding of our time frame here and I wish Mr Kormos could be a little more forthcoming, but as I understand his motion, I would take it to mean that he would move Mr Kruger be called upon to attend before the standing committee on administration of justice during its consideration of Bill 10.

1650

That consideration is today and tomorrow. If he could come today, I would have no objection. I doubt he can; I think his office is someplace else, and it is now five o'clock. So in essence, what I understand Mr Kormos's motion to mean is that Mr Kruger be called upon to attend before the justice committee tomorrow.

If he can appear, fine. If he is not able to appear, then we will

continue with our clause-by-clause consideration of this legislation. If Mr Kormos is in agreement with that interpretation, then I certainly have no difficulty with his motion.

Mr Chiarelli: On a point of order, Mr Chairman: I wonder whether Mr Kormos would agree to change the wording slightly to read "during its two-day consideration of Bill 10."

The Chairman: That is not a point of order. That is up to Mr Kormos. It is his motion. If you want to move an amendment to the motion—

Mr Chiarelli: I am asking through you if he would change it.

The Chairman: You have given your message to Mr Kormos. I should go back to you, Mr Kormos, but I think you are the person who wishes to persuade the members to vote for this, so I am going to hear from the others first.

Mr Kormos: There is one member left holding his cards really close to his chest.

The Chairman: Is that right? Mr Runciman, you—

Mr Kormos: No, not Mr Runciman.

The Chairman: No, but Mr Runciman indicated a desire to speak.

Mr Runciman: I was just wondering, if it was of concern in terms of timing, if we could even stipulate the amount of time that Mr Kruger would appear before us, or at least stipulate the amount of time we require to deal with clause-by-clause. I do not think it would be more than a half an hour. If we have the understanding that Mr Kruger's appearance and testimony will allow for at least a half an hour at the end of the proceedings tomorrow to complete clause-by-clause, that resolves the concerns.

The Chairman: We will go back to Mr Kormos. It is your motion. You have had some suggestions that may or may not be moved as amendments by Mr Chiarelli and Mr Runciman. Do you wish to continue with the motion as it stands?

Mr Kormos: No. I am just amazed at the scepticism of Mr Chiarelli when he suggests the motion should be amended to say "during its two-day hearings." I am not on the subcommittee. Mr Hampton is on the subcommittee. He obviously participated in the decision-making process that two days were going to be set aside for these hearings.

The Chairman: We once did that with Sunday shopping, though, Mr Kormos, and it did not quite fit into the agreed-upon categories. I think that may be why Mr Chiarelli, or as he was known in those days, Mr Chiparelli, would have been upset.

Mr Chiarelli: I had filibustered.

Mr Kormos: That is great. I have been told that he was on that committee. It is all folklore now.

The subcommittee decides how long these things are going to take. Who am I to suggest that they take longer?

Mr Chiarelli: You had better be careful. I am the deciding vote now.

Mr Kormos: Mr Hampton is around, but he is just doing other things.

Mr Kanter: You are going to call him in for the crucial vote.

Mr Kormos: I will amend that. Let's say "during its two-day consideration of Bill 10."

The Chairman: Mr Kormos moves that John Kruger, chairman of the Ontario Automobile Insurance Board, be called upon to attend before the standing committee on administration of justice during its two-day consideration of Bill 10.

Are you content with that, Mr Chiarelli?

Mr Chiarelli: It is Mr Kormos's motion.

The Chairman: Maybe we do not even need a motion. Perhaps we can inquire as to whether we might agree to that on unanimous consent. Is there unanimous consent?

Some hon members: No.

The Chairman: All right. The motion has been moved by Mr Kormos.

Mr Kormos: Wait a minute. Do not forget, I have not finished speaking to it.

The Chairman: Well, sometimes it is wiser, if you think you have a win, to move it, but I was not going to cut you off if you want to speak to it.

Mr Kormos: I do not want to spend a long time talking to it, except to say that maybe something happened while I was out. I mean, you are doing the straw vote stuff and people have been quite vocal about where they stand on this whole matter. You talk about being sceptical or cynical; I have some real concerns about Mr Polsinelli.

The Chairman: Do you think you are going be burned? Is that what you are saying?

Mr Polsinelli: It does not matter how my vote goes.

The Chairman: The reason I think it might save time is that we did agree that if there were people who wished to be heard, we were going to hear them. That is not contrary to what we had agreed upon, so I do not see a problem.

Mr Kormos: Fine.

The Chairman: As long as it is within the framework.

Mr Kormos: Everything should be within the framework.

The Chairman: Okay. You have the motion on the floor. You do not have unanimous consent, so are we ready to vote on your motion?

Hon Mr Elston: He said he has not finished discussing it.

Mr Kormos: I am not going to spend more time discussing it.

The Chairman: Okay, we are ready to vote then.

Mr Kormos: Fine.

The Chairman: Those in favour of the motion, as amended, by Mr Kormos?

Those opposed?

Motion agreed to.

The Chairman: The clerk will contact Mr Kruger. I think it makes sense that we deal with him right at 3:30 or whenever we start so that we do not tie him up sitting here. Is there unanimous consent that it be at 3:30, or in the fullness of time thereafter?

Mr McGuinty: For how long?

The Chairman: It is my understanding of the content of the motion, from all the discussion that took place, that he would be heard and there would be sufficient time left over before the end of the day to complete clause-by-clause on Bill 10. Is that the understanding of all and sundry here? If not, signify right now. Hearing no signification, I presume that is the intent of the motion. Mr Kruger will be here at 3:30 tomorrow.

In light of that, obviously, you do not wish to pursue clause-by-clause. Is there anything further that you wish to pursue today?

Mr Kormos: I appreciate the minister is not prepared to say that there is a crisis in not only affordability but availability of auto insurance. I have cited to him a couple of examples of things. I know that he knows these things go on. Again, we may disagree about the frequency of those occurrences.

As to the fact that product reform is in the hopper, is the minister prepared to tell us now when he expects to implement product reform?

Hon Mr Elston: No, I do not have a time frame. I have not had the report from the board yet. I am waiting for that, plus waiting for the work that has to be done after we make our policy decisions.

Mr Kormos: There are these serious problems of availability and affordability and serious problems of nonrenewal. What Prudential did, it says, was rather than adopt its new scheme of no women under the age of 25 who are single, because it is concerned about how it is amazing that unnamed male drivers crop up out of the woodwork and put those cars at risk, it is still not going to provide coverage at all in three major driving cities in the province.

Hon Mr Elston: I think, to be fair to the company, and I am not apologizing for it, it is not writing new business in those areas, but is writing business that it currently has, which would, as I understand it, include women under 25, young males and others.

Mr Kormos: Unless they write those women in the appropriate time before the renewal date and tell them, "Sorry, but we are not going to renew your policy."

Hon Mr Elston: They made a statement to the press that indicated they were going to continue carrying the other business they had in their company at the time the announcement was made, but they were not going after new business in three areas, I guess it was: Metro, Windsor and Sudbury. I think in fairness to that company that is what it said it was doing and it would be unfair for us to say that it has all of a sudden decided not to do any of the other writing, as you had suggested.

1700

Mr Kormos: As I mentioned earlier, before Mr Kanter suggested that I was on the verge of becoming an apologist for the insurance industry, the insurance industry obviously is not happy with even the 7.6 per cent increase. By and large, it does not appear happy that the 7.6 per cent increase appeared in this bill. Can the minister assure us that they are going to fall into line, that they are going to start providing policies and coverage in the manner they used to, or are things going to carry on as they have been, needless to say, with more and more insurers writing fewer and fewer drivers?

Hon Mr Elston: I do not really know the context of your question in the sense that we follow the people who are writing policies. I think what you are getting at is the issue of whether or not they are requiring people to drop in in at the Facility Association before they write them. I think that is the question you are asking. As I said to Mr Runciman, who had raised that issue as well, I am concerned about the issue of the Facility. I have not put my mind to just how far the Facility goes, so to speak, before it is unacceptable.

I am obviously concerned about the quality of drivers being put in the Facility. There are issues there about which I am concerned, but I think the Facility is not something the largest number of insured are going to find their way into. Right now, as I said, the latest information we have is that about 3.5 per cent of the policies are there and that indicates to me that the other 96.5 per cent of the policies obviously are still being carried by the market.

Mr Kormos: What is the ministry prepared to do basically to stop the haemorrhaging in terms of people who are uninsured, insurance no longer available to them from their long-time or short-term insurer, people who are not in the traditional profile of the Facility Association? There is absolutely no control. The government can tell insurers, "You're not going to increase premiums beyond 7.6 per cent," but the government has not indicated any interest in ensuring that drivers have insurance coverage.

Hon Mr Elston: Right now, if people cannot get coverage through their regular company routes, and there are several companies out there,—then they go into the Facility and they are covered through the Facility to get insurance. That is in fact the way it happens. That is the regular route. I am concerned, as I said before, about those people who are seen to be good drivers who fall into the Facility—that is an obvious concern—but for you to somehow indicate that it is not the usual case for people who are not considered good risks to go to Facility is just not right. The Facility has existed for those people.

Mr Kormos: The Facility has existed for bad risks.

Hon Mr Elston: That is right; that is what I just said. I am

concerned about those people who are seen to be quality drivers being dumped in there. I have no quarrel with you on that.

Mr Kormos: All right. So what is the ministry going to do about those people who do not fit the profile of the Facility-insured being forced into Facility?

Hon Mr Elston: Well, the issue about which we are deliberating is the capping. We also hope to deal with the increases in the Facility at the same level—that is, the 7.6 per cent—so that we do not give an advantage to companies dumping a whole lot of extra people in there. Other than that, we have not put in this bill anything other than the rate-capping requirements and the monitoring required to deal with the issues. We have not, for instance, come to make a decision that there be an all-comers rule, which some jurisdictions have for instance, that requires companies to write anybody who shows up at the door. We have not done that in our bill here. You may suggest that should be something we would do with respect to product reform, but that is not the issue at hand.

Mr Kormos: I read the minister a letter some couple of weeks ago in the Legislature from a brokerage indicating that an insurance company was not prepared to write the automobile insurance unless it also had some other type of insurance with that customer, household insurance presumably. Is the minister prepared to do anything about that type of practice?

Hon Mr Elston: There is nothing we can do at this point. There were provisions that dealt with the issue of tied selling in Bill 155, as it was then known, but as you know that has not been passed. As you had indicated, the requirements of another insurance policy in addition to auto insurance is again set out in the example, but we have no authority at this point to say that you cannot give the consumer an opportunity of purchasing the product in package form. As long as consumers are not being required to buy something they do not need, I am happy to let people find ways of getting a less expensive product.

Mr Kormos: What about the example, once again, of not being entitled to automobile insurance unless you have some other form of insurance coverage? What about the driver who does not need some other form of insurance coverage? If that is not fitting the structure you discuss, nothing can. Does the ministry not intend to respond to that type of problem?

Hon Mr Elston: The issue about whether or not a person needs other coverage, of course, is the basis of your question. We have to take a look at the examples and then we could make a determination. As I said earlier when you raised some of your anecdotes without attaching names and otherwise to them, I have a difficult time tracking down the details behind it, but as soon as I have names and some details, then I can make some determinations. I just do not convert the generalities of some of your assumptions about some of your anecdotes that you generalize about and then say that is going to be the way for everything to be for ever and a day.

Mr Kormos: I gave the minister the name of Tom Tsaparis—T-s-a-p-a-r-i-s—in Welland, who is insured by Advocate General. He had a vehicle that was involved in an accident and was repaired by a Niagara region company. I gave that name to the minister over general concerns about Advocate General. I gave the minister the name of Gino Pasquariello—P-a-s-q-u-a-r-i-e-l-l-o—from Thorold. I gave him that name in the House a week and a half ago. I gave him the names and addresses of several

other persons, all of whom are experiencing the problems that I have anecdotally related to the minister today.

Hon Mr Elston: I think the first fellow, for instance, was a person whose vehicle was sort of impounded by an auto body thing.

Mr Kormos: A mechanic's lien or warehouseman's lien.

Hon Mr Elston: Yes, whatever. I understand that one has been dealt with. I will go back and check for sure. I understand that one has been worked out, but it has not dealt at all with the issues you have raised anecdotally here, because you have not talked about the issue of the Advocate General, which was a very specific item.

The gentleman, as I understand it, had his vehicle impounded because of Advocate General, which is, as you know, a federal company under some federal stress at the moment, not paying accounts. As I understand it, that issue has been dealt with, but I will confirm that to the committee tomorrow for sure. It is my understanding that one has been dealt with. In fact, the anecdotes you have talked about have not dealt with his issue at all, so it is unfair for you to name him as an example.

Mr Kormos: Which is why I move on to Gino Pasquariello from Thorold, whom I told the minister about two weeks ago and who was the young—

Hon Mr Elston: You have given me three or four more days there; it was a week and a half last time.

Mr Kormos: Okay, you can have two weeks; time flies when you're having fun.

Hon Mr Elston: Absolutely. The longer the time period you can cite about an answer, the better it makes it sound for you.

The Chairman: Are you really having fun?

Mr Kormos: I was not trying to suggest that the five days or four days would have made any difference.

Hon Mr Elston: When you raise some specific items, though, we really take them seriously and we try to move as best we can to provide some relief for those people, and we will continue to do that.

1710

Mr Kormos: The minister knows that my office and my leader's office have started to take the minister up on his undertaking to us and have started to take advantage, not in an exploitive way—

Hon Mr Elston: We know you guys.

Mr Kormos: —of his office and refer these matters to the minister, so that he can use his connections to resolve these problems. What I am saying is that you have seen and heard the names and places attached to the anecdotally based questions I have put to you.

Hon Mr Elston: But I just want to make it very clear for the record here that some of the names you have given us are not reflecting the anecdotes

you are giving us, such as the gentleman's up here. I forget. Was it Mr Tsaparis?

Mr Kormos: I could not help but throw that one in because I knew Hansard would have trouble spelling it if I did not spell it out for them.

Hon Mr Elston: Well, listen, no, I am happy you did, except that it just does not reflect any anecdotes; that is all. I can tell you that the fact is we already have dealt with that issue satisfactorily.

Mr Kormos: I tell you that just as I named Mr Tsaparis and his company, I named a number of companies; names, dates and places. I named the company, the name of the source and the addressee of the letter for the insurance company that was basically blackmailing its customer into buying other types of insurance along with automobile insurance.

The Chairman: I have to stop this because I am not sure if we have total privilege in this committee.

Mr Kormos: The only thing I remember about libel and slander from when I went to law school was that truth is always a defence, and that is the ultimate. I have never been concerned about libel and slander. All one has to do is always be truthful.

In any event, is the ministry saying it is not considering even any interim legislation to deal with the very sorts of problems the minister knows are being experienced by auto insurance consumers here in Ontario right here and now?

Hon Mr Elston: I want to deal with this interim difficulty and I want to get this rate-capping bill we are talking about, but not very much today—and tomorrow—passed and then we can consider our product reform and all the other activities that are required to make sure there is fair delivery.

I am prepared to consider anything inside the product delivery because I think when in our next piece of legislation we really do set the tone for some time for the delivery of insurance, we must examine all the things that can be done to ensure that consumers have fair access to the marketplace, that they have the information required not to be subject to packages that are required, if they do not need the coverage.

Those are all really valid points with respect to designing an insurance product. I do not have a quarrel with trying to eliminate what are determined by the Legislature to be issues that are not sound public policy and that we put together our statute to deal with product reform in a way that will be as comprehensive as possible. I have some difficulty in bringing forward another interim bill, bearing in mind how long it has taken us to get this far with this one which is relatively clear-cut in its application.

Mr Kormos: I should ask the minister why he considered it significant to include section 8 in the bill?

Hon Mr Elston: For each of the bills we put through here, we have to have some regulation-making ability and it would be unfair not to have the same here. The idea of the regulations section is that it helps to implement the bill.

Mr Kormos: But it remains that what section 8 permits is for the government to permit increases beyond the 7.6 per cent in accordance with regulations that are not the subject matter of committee or legislative discussion. Really, it makes 7.6 an insignificant number, because any given insurer at any given point in time can receive increases above and beyond the 7.6, so I wonder why the minister suggests to us that it is essential to the thrust of the legislation.

Hon Mr Elston: Because there may be some class of insurance that the board deliberates on and reports that we need more than 7.6 on, and indeed, I might even go so far as to say less than 7.6 on. The fact that this bill goes to the end of next year is because I made a conscious decision that I did not want to make a short time frame for the life of the bill, because I could see some time required in discussing the product reform and otherwise.

But I am confident that the limitation of the bill, namely, to the end of the next calendar year, will mean that what you are trying to indicate, the abuse possible with this flexibility, will not be heaped upon the consumers in any event. Basically, you have to have some flexibility in the bill to make sure you have all of the classifications of insurance determined.

Mr Runciman: With respect to what you are saying about the flexibility of the future rate increases during the life of the bill, what kind of plan of action do you have in the ministry with respect to dealing with further increases? Do you have some sort of date in mind when you may be indicating industry-wide increases to the cap?

Hon Mr Elston: No, I do not have that in mind, although the bill would allow us to make a determination down the road if we found that product reform was lagging. But at this moment I have not, and I do not plan on doing anything in the passenger automobile marketplace, because I think we can probably move our determination about product reform along in such a way as to obviate the necessity of changing that cap.

Mr Runciman: You have the ability to do it, but you are suggesting that you do not contemplate doing it as part of product reform?

Hon Mr Elston: That is right. As I said, once I get the report from Mr Kruger on the other products, I think I would move fairly soon after that to make a decision about product reform and then hopefully be able to put it through the Legislature and into committee and have hearings and witnesses and things at a rate that would not require us to move beyond the 7.6 indicated here.

Mr Kormos: The minister, in responding to Mr Runciman, talked about public auto insurance.

Hon Mr Elston: You mean earlier on?

Mr Kormos: Not the most recent response, but earlier. Let me first ask: For the period of time during which there has been a consideration of product reform, and we are awaiting now the report of the board, can the minister estimate the cost of that hearing that was devoted to product reform, that is, the cost of the operation of the board?

Hon Mr Elston: No, I cannot. I have not turned my mind to that

issue. I guess what we can do is probably estimate the number of sitting days and go from there on it. But I have not actively pursued that cost.

Mr Kormos: Why has the minister not requested the board to consider public auto insurance?

Hon Mr Elston: Because we are looking at the product itself, the issue of how best to deal with losses incurred by the consumers. I want to see what the various opportunities are with each of the variations we talked about as opposed to the issue of public and private ownership, which is really a policy determination as opposed to the practical application of variations of product.

Mr Kormos: Surely the minister would consider investigating public auto insurance from a point of view of its being able to provide a less expensive product?

Hon Mr Elston: Yes.

Mr Kormos: And that is not purely a policy matter; it is a matter of whether a public system can deliver a product more efficiently, more economically than a private system.

Hon Mr Elston: We were able to find, I guess, internally from reports and otherwise about the level of subsidy required to protect the prices given in British Columbia, Saskatchewan, Manitoba and otherwise.

Mr Kormos: Perhaps the minister would share with us his information as to the level of subsidy.

Hon Mr Elston: There are considerable amounts of dollars put into the system at one time or another by taxpayers and there are other ways of perhaps putting charges in that assist in making payments through the insurance system. I am not proposing at this point to discuss the issue fully, but I will be more prepared at the time we bring our product reform bill in, I think, with respect to actual dollars and numbers.

1720

The Chairman: Mr Kormos, if you look at the Hansards from the hearings that were conducted, there was extensive evidence produced on that which would be available in the Hansards.

Mr Kormos: One of the government members a couple of weeks ago indicated that the government had investigated the western systems and cited Mr Justice Osborne as having investigated. Yet, as I recall it, that learned man never went west of Ontario, Kenora maybe, and indeed commented on those systems. As I recall it, he looked at a whole bunch of European models. The minister mentioned some of these subsidies, other than the startup costs; again, Mr Justice Osborne talked about those almost from a commonsensical point of view, knowing without looking at anything that there is going to be startup costs.

I am wondering if the minister, when he talks about the subsidies— I presume he is referring to operational subsidies on an annual basis—could just illustrate that with two or three examples from British Columbia or Manitoba or Saskatchewan.

Hon Mr Elston: Not to belabour those issues in the context of a capping bill, which is really the subject matter of today's debate, we could go at it, I suspect, and will, when we analyse what the opportunities are for us in product reform. On the issue of making payments, whether they are one-time or startup or whatever, the taxpayers always forgo the money they could have earned or the money they lost in having it applied to other social policy areas; the use of the dollars put into the BC system, for instance.

The issues of whether some jurisdictions also charge higher costs for licence plates, charge a higher cost for other services, or whether they happen to underwrite or make payments towards part of the repair system or otherwise, are all issues you have to deal with in analysing where the costs and subsidies are that go into the system. Those are some areas you might check into with respect to issues of subsidies.

Mr Kormos: Mr Chairman—

The Chairman: Mr Kormos, I do not want to cut you off, but you obviously did not have the benefit of going around on those hearings; your predecessor did.

Mr Kormos: Do not speak of him as if he were buried; he is alive and well.

The Chairman: No, no. "Predecessor" means he is alive and well and living in Welland.

Hon Mr Elston: No, he is living in Florida in the off season.

The Chairman: I think if you do not already have the Hansards, the Hansards would answer all of those questions.

Mr Kormos: Honest to goodness, I promise that if the minister gives two or three concrete illustrations of places of what he is speaking of when he speaks of subsidies, I promise I will not argue with him today. I promise I will not even respond verbally. I am interested in the fact that he raised this matter, because of course he is talking about product reform. He left the door open—

The Chairman: He is talking about product reform but it is my understanding that by voting on Bill 2, the issue, in terms of public auto insurance, has now been decided.

Mr Kormos: Well, no. We are talking about Bill 10 today and an integral part of the discussion about Bill 10—

The Chairman: Bill 10 has nothing to do with public auto insurance.

Mr Kormos: On the contrary. In response to Mr Runciman, the minister said, "We have not shut the door on public auto insurance." Mr Runciman had one reason for asking that question; I, obviously, have another. Lord knows, we do not want to get scooped again on an election issue. So Mr Runciman asked that question; the minister candidly answered him. Then the minister was talking about Bill 10 but as an interim procedure pending product reform. So then I said that product reform sounded good; let's reform the product.

Now, the minister said the matter of public ownership versus private ownership is merely a policy decision. It is whether you believe in one or the

other. I said I had a hard time understanding that, because I see it as the possibility of one system delivering a more affordable type of insurance, so I put that to the minister. Then the minister said, "Aha, but in those western provinces they subsidize."

Hon Mr Elston: I did not say that.

Mr Kormos: This is not a direct quote.

Hon Mr Elston: I can never complain that you are guilty of direct quotes.

Mr Kormos: So be it. I have not been guilty in my life.

The minister says "subsidies." All I am saying to the minister is that it is interesting. I am a neophyte, this is new ground for me, so I am saying: "Subsidies? My goodness, perhaps the minister is right. Perhaps I've been led down the garden path."

We are not talking about startup costs. He is talking about operational, annual subsidies. That is the assumption I am drawing from what he is talking about. Maybe if he could just tell me two or three, it could impact on the rest of my life.

Hon Mr Elston: That is doubtful.

Mr Kormos: My whole perspective could be changed.

Interjection.

The Chairman: Mr Ferraro, you are welcome to join us. We would like to get your words on the record, though.

Mr Kormos: All I want are two or three real ones so I can say: "My goodness, the minister is right. That's it. This is all for naught and we'll never raise that banner again."

The Chairman: Again, I suggest that you go back and read the Hansards from Bill 2. There is extensive evidence of that.

Mr Kormos: I am trying to get him to tell me here and now. Maybe I am doing it the easy way instead of the hard way.

The Chairman: Do it the hard way, because I think you will probably get it just by reading one meeting. Perhaps Susan can help you on the meeting. I think Susan was the researcher.

Ms Swift: Yes.

The Chairman: She can probably help you out.

Mr Kormos: I was hoping the minister would be able to just rattle a couple off the tip of his tongue.

Hon Mr Elston: Excuse me, if I thought it would help solve Mr Kormos's dilemma, I would probably run right out and get my documents that underscore all the issues, but to be quite honest, I do not believe him when he says that if I gave him three examples he would for ever change and never

raise a banner, because I know right well he would not. It is an issue of theology, almost, with him and his party, and no matter what is said, they will deny the existence of any the evidence, in any event.

Mr Lupusella: It is called dogma.

Mr Kormos: I have a dogma. It is a little beagle. His name is Charlie and he is housebroken.

Hon Mr Elston: From my point of view, the issue around whether private or public delivery will be used to deliver a product will be talked about again when we bring our product reform bill in, to probably this very room. We can talk about it then. We can go over it, but for the member for Welland-Thorold to say that if I can give him three examples right now he will never talk about it again is asking a little too much of our credibility.

Mr Kormos: Who is misquoting whom? The record will show me to be right in this regard. I raised the prospect of changing; no commitment there. I was not going to do that to myself or to the minister.

The Chairman: I have to go. Someone has to take the chair, unless, of course, Mr Kormos is finished.

Mr Kormos: I am finished for the day.

The Chairman: Are there any further items you wish to raise? I would ask you to be here tomorrow at 1530 promptly, because Mr Kruger will be here at 1530.

Mr Runciman: Has that been confirmed?

The Chairman: Yes. I have spoken with the clerk. He will be here along with counsel to the board, so perhaps you can all be here at 1530. We stand adjourned until 1530, promptly, tomorrow.

The committee adjourned at 1730.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
AUTOMOBILE INSURANCE RATES CONTROL ACT, 1989
TUESDAY, 20 JUNE 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

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Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr Hampton

Morin, Gilles E. (Carleton East L) for Mr Polsinelli

Clerk: Arnott, Douglas

Staff:

Revell, Donald L., Senior Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Automobile Insurance Board:

Kruger, John P., Chairman

From the Ministry of Financial Institutions:

Elston, Hon. Murray J., Chairman of the Management Board of Cabinet and
Minister of Financial Institutions (Bruce L)

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 20 June 1989

The committee met at 1536 in room 228.

AUTOMOBILE INSURANCE RATES CONTROL ACT, 1989
(continued)

Consideration of Bill 10, An Act to control Automobile Insurance Rates.

The Chairman: I recognize a quorum. Mr Kruger is in attendance, as requested. Mr Kruger, perhaps you would come forward and take a seat here at the front desk in front of one of the microphones. Although we all know who you are, perhaps just for the benefit of Hansard you could identify yourself, and then we will enter into questions.

ONTARIO AUTOMOBILE INSURANCE BOARD

Mr Kruger: For the record, my name is John Kruger, and I am the chairman of the Ontario Automobile Insurance Board.

Mr Kormos: I want to thank Mr Kruger for coming on what was obviously short notice.

In view of the fact that Mr Kruger has been involved with the OAIB since its effective history, I am wondering whether initially he would just comment generally on the course of events and in particular on Bill 10 in so far as it interrupts the board's process; whether he has any general comments, having been so thoroughly involved as he has been in that regard.

Mr Kruger: I have no specific comments I could make. I would think we have been proceeding on doing our work at the board. If Mr Kormos has a specific question, I would be delighted to answer it.

The Chairman: I should just intervene. I will allow any questions you might want to ask that could be answered by Mr Kruger, but if they get to policy questions, I am going to interrupt. I think it would be unfair to put Mr Kruger in that position. Just as long as you understand that—

Mr Kormos: I did not think that was an unfair question.

The Chairman: No, it was not. That is just a general statement, so go right ahead.

Mr Kormos: Mr Kruger's response was one of the many responses that could have been made to that.

I should say, as I indicated yesterday, that I see Bill 10 as very much a response—a response, among other things—to what undoubtedly were the rate submissions being made by auto insurers in compliance with the guidelines set down by the board.

Particularly in view of the fact that the board, when it set its rate or range of rates, set a benchmark figure and then had a plus range and a minus

range, I am wondering if Mr Kruger could tell us about the rates that were filed, because presumably some insurers filed rates. I know there was a grace period permitted, an extension basically, because of the apparent difficulty insurers were having compiling their figures and getting their material together.

In view of the fact that the so-called benchmark was 7.6 per cent, yet there was a range, a minus range and a plus range, I am wondering if Mr Kruger could tell us what the general proposals or filings were by insurers. Did insurers tend to follow the benchmark in terms of their requests or submissions as to rates, or did they indeed, as was suggested by many who were critical of that formula, opt for the maximum numbers?

Mr Kruger: I do not think you can answer that question on a simple thing of rate hearing 4; I think you have to go back to some basics of what the board did and the process it was followed. In fact, it was in this committee when Bill 2 was going through that Mercer's Irene Bass did a study for this committee and indicated there would be a severe dislocation because of the elimination of age, sex and marital status.

When Bill 2 came down, section 33 said that we could not have a system of classification that incorporated those features. So the first hearing we had was on the classification system. That hearing just verified, more or less, what Mercer had said, because we did make up a complete classification system as we were required to do under the act.

The second hearing we had was on rate-making methodology, which had quite an impact, in the end, on the setting of rates, as to what the algorithms would be, and to get some type of standard into the market, because a lot of companies were all over the place.

The third hearing we had was on profitability standards, and that was also an integral part.

In other words, there were three distinct steps. Mr Kormos, I think you were there for the profitability hearing as well, where what we said was that in future the companies should report a return on equity, because it was disturbing to the board that when the companies reported, they reported only their underwriting results, which always showed a deficit, a loss on those operations. We brought out a standard that said, "That's perfectly proper." In fact, we fully expected, on the \$100 of premium you would put in, that the companies would on average lose 5.62 per cent. That was the third pillar, if you will.

That brought us up to the rate hearing itself. In the profitability hearing, we pointed out that there was going to be another factor that would enter into dislocation, and that was the book of business each individual company held. By that time it was becoming apparent that there was no consistency in the way a lot of companies did their territories, nor was there any real consistency between some of the major companies in the way they would treat one insured as opposed to another insured.

One of the great difficulties of Bill 2—and this should come as no surprise to any member here; I have said it publicly and I have said it in speeches—was the inability of the board to be able to phase in or to cap rates. That was the subject of great debate before our board. It was the subject of legal opinions we obtained which said we had no right to phase in or to cap. We were somewhat critical of that. So that exacerbated the whole problem of the rates.

When we set the rates, there was a dispute—I would think a legitimate dispute—between our actuaries and the actuaries who were put forward by the companies. It is quite true that this is a cyclical business. It just so happens that in 1987 when the rates were frozen they were at the bottom end of the cycle, but the claims had started to increase. So the companies were caught in somewhat of a dilemma, because the 1987 results, which were the only results we had—and we had real problems with the data coming forward from the industry—indicated that there was a considerable increase in the loss costs, in other words, in the costs of the claims.

We took the position that we did not know what 1988 was going to do. In actuarial circles, if you have one year that goes up as compared to the other years, that is an anomaly. If you have two years that are consistent, that is considered a trend. So 1987 was, we considered, an anomaly. The companies were already getting their own results, but we did not have industry-wide results. They said, "Oh no, you're going to find that it's the beginning of a trend."

I do not want to get technical, but what we did was go back nine years, and it is what is called in actuarial circles "to the least squares fit." I think, Mr Kormos, you would remember the discussion during which I tried to explain that to people. We said that based upon that, on average, and there is a great difficulty whenever you deal with averages, it would seem that the industry benchmark rate would be 7.6 per cent, recognizing that there was dislocation and some companies were caught.

When the rate freeze came in, you would give a range to the companies. That was decided in our rate-making methodology; that was the proper way to handle a situation like this. Then you would do a range down because some companies, when we brought out the premium, actually had to reduce their rates.

A good number of the companies, particularly in Metropolitan Toronto where the losses were severe, took 17 per cent, no question about that. In other cases, they did not take 17 per cent. As a matter of fact, there were something like about 25 or 26 companies that took below the benchmark rate. There were a great number that took as much as they could get. Other companies were very astute. Some of the larger companies took around nine or 10 per cent. But you see, once we set a range, they were able to use that range. Some of them have six-month policies, so they could have come back because they all knew we were going to publish all of this data. There was going to be a new world of disclosure that was going to come forward.

So when you ask what happened, it was completely all over the place. At the time the minister acted, we did not have all of the rate filings in, but it is true that a good part of the market was indeed going for the maximum because they needed it. There is clearly rate inadequacy within this system. We have seen some draft figures on the 1988 results, and it is quite clear that there was rate inadequacy.

As a matter of fact, I think you will recall we were sufficiently concerned that we wanted to make sure that everyone understood the impact of coming together, of not being able to cap and not being able to phase these things in. We went to the extraordinary length in our report 4 of giving examples.

I can recall talking with you about some of the 80 per cent figures that were there, where there was a dislocation occasioned not only because of the classification standardization but also because of situations within the book of business of the companies.

So it hit and it was real. There is going to be dislocation in the market, no matter what, when you change over from one system to another. The most you can hope for is that you can do it in a systematic way and in a way that is at least equitable to the people. When you deal with averages, you are going to get a lot of people who are below and you are going to get a lot of people who are above. One of the major insurers of automobiles was actually forced, as a result of the benchmark rate, to come in and come in under the benchmark rate, because they had just got in under the wire in 1987.

That is a long explanation, but I wanted to give the background of what we had done, because the rate itself was merely a part of a process.

1550

Mr Kormos: Mr Kruger and his board spent undoubtedly hundreds of hours—I shared some of those hours—in excess of those short periods of time during which I was present, while the board sat dealing with what I at least found to be very complex and oftentimes very difficult sorts of things, both conceptually and when one was working with them in a more concrete way.

In view of the legislation, and I am speaking of the Ontario Automobile Insurance Board Act, I am wondering if Mr Kruger could tell us what he believed his mandate was. Perhaps to be more specific, especially in view of the statements made on a number of occasions about the independence of that board, I am wondering if Mr Kruger could tell us what he expected the course of events would be from that point in time when the rates were filed with the board.

Mr Kruger: The board was certainly independent. I can say this: On the four hearings, there was no dialogue with the minister at all; there was no dialogue with the government. In fact, I recall very specifically one occasion where you and I met out in the hall and you said the Premier (Mr Peterson) had said, "You're going to have to go over into the new year." I said, "Well, that's interesting, but it doesn't affect us." That was the degree of independence we felt. The minister had access to our reports about two hours or so before the reports were released. We were independent and we operated independently.

You must remember that all of the staff are civil servants, so obviously there was dialogue at the staff level, but certainly at the board level we acted independently. I think our independence is no better illustrated than by the fact that we sit here today, that the government has had to come back and alter the legislation to do what the government felt it had to do, namely, to bring in and cap the rates.

While we were a bit surprised about that, the surprise was not total, because in our first hearing we had said: "You're going to have to go to a classification system that has some bonus-malus features and you're going to have to look at no-fault. You're going to have to look at the loss costs." That came out in hearing three. We said that. The only difference in timing is that we were going to do that after. In the end it is nothing that we at the board could have done; it would have required legislation anyway. So yes, we were surprised, but it was not total, because we were saying these things as we went along.

As far as the independence of the board is concerned, certainly to this time: I would say philosophically, if I can, that I have been in government for quite some time and I do not know that in a thing like this you can ever

expect that you will have total independence, because it is a political exercise one goes through. That is just a philosophical thing. I know when I was in another place and in a central position, it used to bother me when the boards and commissions would do things that were entirely out of sequence with what the thrust of the government was, but that is merely philosophical.

The Chairman: I am going to move to Mr Runciman, who has indicated a desire to ask some questions.

Mr Kormos: All right. I will restack.

Mr Runciman: With regard to this whole business as a political exercise, I share Mr Kruger's view. I think once the government intervenes in a significant way, as it has in the private sector automobile insurance area in this province, you keep getting deeper and deeper. Certainly during the Bill 2 hearings process we heard that with the testimony from Saskatchewan, where every second claim results in a ministerial inquiry. That is how politicized the system can get.

We are moving inexorably in that direction in Ontario, in my view, and there is a great deal of concern on the part of my party. We expressed it, going back to the Bill 2 hearings. Mr Kruger has made this point, and I am glad he has, that during the Bill 2 hearings the Mercer study clearly indicated the kind of dislocation we were going to be faced with if indeed the government, with the support of the official opposition, went ahead with the classification plan changes.

Out of this whole exercise, I guess what surprised me was the fact that clearly the government, the Ontario Automobile Insurance Board and anyone who cared to read the transcripts of the hearings of the standing committee on administration of justice of that time would be well aware of what was going to happen when you faced those rate filings back in early April. I guess that is what astounds me with respect to the way this whole matter has been dealt with. I have called it ad hoc, panic-driven policymaking because the Minister of Financial Institutions (Mr Elston) acted astounded that the filings were coming in with significant increases involved in them. Obviously, all of us who have been around this process for some time knew full well that was going to occur.

Mr Kruger, I use the analogy of the Labatt company and the Toronto Blue Jays with respect to your dealings with the provincial government. I like to think of Pat Gillick as the general manager of the Blue Jays. When Labatt bought them, they were given complete independence in terms of on-field dealings. I am sure that if Labatt had vetoed a trade or interfered in any way, shape or form, Mr Gillick would not have remained as general manager. Yet you, as chairman, and your board have seen over \$7 million, I believe, of taxpayers' money spent in going through this very detailed exercise, only to have it overturned at the last moment by the government.

I know the minister has attempted to justify that expenditure in the House as money well spent because of the statistical base that has been built up and so on, but I do not think I buy that. I hope that anyone who is paying close attention to that will not buy it either. We could have spent a few hundred thousand dollars with perhaps some economic majors and compiled the same kinds of statistics without the establishment of a large and ongoing bureaucracy.

I guess I am just wondering if you have any concerns with respect to the taxpayers' money that has been spent on this exercise up to this point.

The Chairman: Mr Runciman, you have said a great deal and I certainly would not want Mr Kruger to be in a position where, having sat there, he has agreed with all of it. If he feels comfortable answering that last question, fine, but the other---

Mr Kruger: No, I am quite comfortable. I recognized right at the end that there was a question, so I eliminated all before as being merely a position. I understand those things, Mr Runciman.

When you are dealing with public funds, I think you must always analyse and weigh them, the expenditure against the benefit received. First, the budget came in—I know it is a small point—at \$6.5 million. About \$1.2 of that was startup costs, so I thought I would get that little thing in focus.

It is a legitimate question. In looking back, what good has been occasioned by the expenditure of that money? Well, a lot has. Let me suggest to you some of those things. Out of our first system, we identified the key elements that should be in a classification system. There are the definitions, for example. Some companies classified snowmobiles with motorcycles. We had the companies all come together to give the right classifications and definitions.

Rules were established. For example, if you had an accident, some companies would deal with the accident one way. They would do a multiplicative surcharge as opposed to what we wanted to be an additive surcharge. We began a statistical plan—Mr Justice Osborne was very critical that the insurance industry had not been able to get together to give good, solid data and statistics—so that we were able to outline what the benefits were of that, and there were benefits.

I would say that hearing is going to be very fundamental in the future for the data that was gathered. That is not lost; some of it, maybe about 10 per cent. The rate-making methodology was not lost because we got into the subject of algorithms. We settled with the industry that we would be dealing in pure premiums as opposed to lost costs and so forth, so that really was not lost.

1600

As for profitability standards, yes, some of that could well flow by the board, but I think we established certain principles that were very clear, and there was not that much disagreement with the companies. They should report all their material to us in the form of a return on equity, bottom line, and the taxpayers of this province had every right to see that. We wanted it not just on the regulated automobile lines, but on all their casualty business.

Yes, in the rate hearing, hearing number four, some of that is lost; there is no question about that. But I would say on balance that 70 per cent of what we have done has been recoverable and will be a useful basis for whatever the government might decide in the future with regard to the form of reform it intends to bring forward. So it is not lost. You have to go through this exercise.

It might be very interesting for this committee to know another fact I did not know until our hearings. In every jurisdiction in the United States,

and even Quebec included, the first time they ever brought in a bill in about two years they had to go back and change it to get it right. As a matter of fact, the analogy is that in New Jersey, they have spent 17 years and they still have not got it right. We had the commissioner there, a Mr Merin, who indicated that to us, so it does not surprise me that you have to go through this exercise on a regular basis every three to five years before you start to get it right in accordance with the jurisdiction in which you are operating.

Mr Runciman: If this government had been patient enough to wait for Mr Justice Osborne to report, perhaps we would not have to be concerned about a lot of those things as well.

Mr Kruger: He appeared before us and we had a lot of agreement.

Mr Runciman: But the government was already committed to the path prior to Mr Justice Osborne making that report.

Mr Kruger: His evidence was, I think, very important to the hearing we have just been through, the reference hearing.

Mr Runciman: In any event, I think we have the horse behind the cart in the way this whole matter has been dealt with. I guess I would, to a degree, agree with you that certainly some of the expenditures of tax dollars with respect to what you have been involved in for the past period of time will be of long-term benefit, but I guess our disagreement would be over whether this is the appropriate way to achieve that and whether it could have been done at much less cost to taxpayers.

Another element of this, before I deal specifically with Bill 10, is the aspect of private sector expenditures. I have heard estimates of \$50 million to \$60 million being spent to meet the requirements of the board with respect to the changes and a lot of arguments being made that a good deal of that money is lost, is in many respects wasted money. I would be interested in your response to that.

Mr Kruger: Of course, when we would take some of these estimates given by authorities who might have been speculating on what the costs were, we had a thing where we would take two fifths of five eighths and then kind of figure out what it might be. The best evidence you can get is on individual companies. What we did do is we gave them an expense constant in the rating factors we put forward. You are quite right, though: some of the expenditure will indeed have been lost to those companies. They were all gearing up for the classification system.

But there has also been a positive effect. By having to gear up for that classification system, they have looked at certain aspects of the classification system which they felt they had to revise anyway. There are a couple of major companies that have indicated this to us. They said, "Yes, we've gone further than what we would have liked to have done," but in the definitions, in the coding they had to do and in the territorial breakdowns.

That is another thing. Let me give you an example of that. There is one major company that---this is just a product of time; it could happen with any company. It was in a large metropolitan area and it was an area that was growing. A part of the urbanization of that happened to be in a certain territory. The one that abutted was rural. They have not gone back to do their changes for something like about 12 years. That rural part is now totally urbanized, but because there is a rating differential between a rural

territory and a territory that is urban, you can have a person who is one street away paying \$200 more than the other person. The rating has not caught up. So they have caught that up. That is another product of dislocation.

But you are quite right that some of it would have been lost. It depends on the individual company. We have a committee between ourselves and the Insurance Bureau of Canada where we meet on a pretty regular basis to discuss some of these problems. The feedback that we are getting from them is, yes, some of it may have been lost, but it has been very important that they do it.

Some companies, on the other hand, were not computerized to that extent. They had an advantage, because the one thing about computers is that if you have your own manual system, you can react pretty quickly. A lot of them did change the manual system and it has forced them into some computerization, which they would have had to have done anyway. But yes, there is a balance there.

The \$50 million—gee, I had not heard that one. I had heard \$30 million to \$40 million. I have heard one company that has claimed it had \$10 million. I happen to know the company and I happen to know the equipment it got. How they got \$10 million, I do not know. They must have added everything in, including the lunches and trips and things like that. I just do not know. The figures, I think you would have to say, Mr Runciman, are somewhat suspect until you get into the individual companies.

There is another aspect to it too. In any event, when these companies changed their system—they do this on a somewhat regular basis—they would have incurred some of those costs.

Mr Runciman: Earlier, you mentioned the minister's announcement with respect to Bill 10 and that some rate filings had been in. Just roughly, in terms of percentage, how many rate filings had you received when the minister made his decision?

Mr Kruger: I think some of the majors were in. I would have said that it was a good part, about 70 per cent or so of the ones that write the premiums. I just do not have those figures with me, but they were in or they were coming in. We had a lot of questions about them, though. There was a lot of dialogue going on. We were particularly interested in going forward just to see what the mix was.

Mr Runciman: How significant were they in terms of causing concern at the board level? You know, I am talking about percentage increases. If you were looking at an average, what kinds of increases were you looking at that caused so much concern within the government ranks?

Mr Kruger: I think you would have to direct that to the government, but—

Mr Runciman: There was no concern at the board with respect to the filings at the board?

Mr Kruger: This is our report. We had made our concern very clear right up front. In the examples we gave, different to what we had done in other decisions, we actually gave examples of what was going to occur as a result of the dislocation and what the result of the price was going to be.

The one figure that has been quoted all around is the 82 per cent increase, even 67 per cent. That is right in our report.

Now, that was a 30-year-old who had only been driving for two years. We did this deliberately because we wanted to show the whole spectrum of it. I do not know where this 30-year-old is who has only been driving two years in Metropolitan Toronto. This is driving a 1987 Pontiac, medium annual driving distance, no claims or convictions. As a result of the class plan, it was going to be some 55 per cent to 60 per cent on that person, and it was going to be the impact of the rate if they had gone to the benchmark with another 7 per cent to 7.5 per cent. So we indicated that. On individual insureds, we did not analyse at all from the point of view in this report. We said, "This is what is likely to happen."

Mr Runciman: When did you turn that report over to the government? What date was that?

Mr Kruger: This report was issued---you would have got it at the same time.

Mr Runciman: I know. I just cannot recall the date; that is all.

Mr Kruger: It was 13 February.

1610

Mr Runciman: February. I recall the government and the backbench members of the government smiling gleefully with respect to that report being tabled. You say that in February, when we had all those gleeful smiles facing us, there was a very clear indication in your report of the kinds of significant increases some sectors would be facing.

Mr Kruger: I am glad you said that, because we also indicated in this report that there would be people who would be going down and some of the decreases were going to be substantial. That is what you get when you deal with averages and when you get a change in a class plan. So that was all spelled out. We truly expected there would be a dislocation impact that would occur over about two years. I do not think you can wash these things out just in one period of time.

Mr Runciman: So in the two or two-and-a-half month time lag between the tabling of that report, the receipt of that report, and the minister's announcement, nothing had changed. Actually, there was a fulfilment of the projections the board had made.

Mr Kruger: Well, there started to be, on an individual basis. You see, there is a lag time. We had to issue the board order. The board rate order itself was issued on 13 February and gave effect to this report. But then the insurance companies had to get it into their system, and they had 30 days to start sending out the renewals and to be concerned about that. So the impact on an individual basis would not start to come in, in the lag period, for 30 to 45 days after. That is when we were starting to get quite a few calls from people who were saying "This is the impact on us." We knew that. We did not know on individuals.

Mr Runciman: I guess I do not have any disagreement with what you are saying. The point I am trying to make, really, in terms of the inability of the minister and his colleagues to be embarrassed about what has happened,

or yourself for that matter, was that that report was in the hands of the government in February. They were very pleased about it and they let that time elapse wherein the private sector spent millions of dollars—we do not know how many millions of dollars—and then we have a panic reaction in April, when all of that could have been avoided to a significant degree, in my view anyway, unless you want to say something different, if the minister, his staff and executive council colleagues had said: "Look, we are going to have some 70 per cent increases, and the board is clearly pointing that out to us. Let's take a look at product reform right now."

The Chairman: There is a point of order, Mr Runciman. What is the point of order, Mr McGuinty?

Mr McGuinty: I thought that yesterday the spirit of the motion to have Mr Kruger here was to have him here to provide background information, not to subject him to political editorial commentary and to try and lure him into debate. I am not sure if the spirit of that motion is being carried forth now. We agreed there would be sufficient time to have clause-by-clause analysis, and as things are proceeding, I am not sure we have that time today.

The Chairman: Well, in the words of our revered Speaker of the House, I have listened very carefully to your point of order and it is not a point of order.

Mr McGuinty: Point of view?

The Chairman: It is a point of view.

Mr Runciman, I had given Mr Kormos 20 minutes. You have about two more minutes left and then hopefully we can meet the challenge we set for ourselves yesterday.

Mr Runciman: Mr Kruger and I have discussed issues—

Mr Kormos: I am sorry, Mr Runciman. Just in response, Mr Chairman: — you mean I have used up all of my 20 minutes?

The Chairman: Yes, you did. We started at 3:35 pm and I gave the floor to Mr Runciman at 3:55 pm. You spent 20 minutes.

Mr Kormos: There is still lots of time left, so after Mr Runciman's 20 minutes—unless some of the other members want to use their 20 minutes.

The Chairman: We will get a feeling of the committee in a moment.

Mr Kruger: Mr Runciman, was there a question in what you just said?

Mr Runciman: No, there was not. Your answers are too lengthy so I am not going to—how do you see the role of the board with respect to Bill 10? You are mentioned here as monitoring compliance with the act. What else are you going to be doing for the next year? How are you going to keep yourself busy in spending those tax dollars in the next year or so?

Mr Kruger: Do not say that too loudly, Mr Runciman, because I have been complaining to the minister how overworked we are. We have to finish off the rate hearing. There is a lot of administration that has to be done. We are waiting anxiously to see what the government will finally do with regard to product reform. There is a lot of monitoring that does have to go on. There is

dialogue that has to go on with regard to the insurance industry, particularly when it comes to the statistical plan that it is attempting to develop. So I have no concern about that.

I think the role is quite clear. I think this bill, Bill 10, says: "All right, the board will continue to function much as the board has done. However, we, the government, are saying that we are capping the rates until such time as product reform comes in." In fairness to the government, and to get back to the previous point that you made, I do not think that it was totally aware or could have been totally aware of the consumer impact until that lag time that I speak about was caught up, and I guess it acted. I do not see that it is a problem.

Mr Runciman: I appreciate your reasons for wanting to respond to that. I am not sure, if we are talking about appropriateness or inappropriateness, whether it was necessarily appropriate for you to make that comment.

In any event, you talked about independence from the government in the past. I do not think we have had an opportunity to talk to you about this, but I know there was some press reference a year or so ago about communication you made with the Treasurer (Mr R. F. Nixon) with respect to an interim increase and the appropriateness of that communication, that contact. I guess at the time the Treasurer was the Minister of Financial Institutions. I just thought I would afford you an opportunity to perhaps comment on that in respect to your independence as chairman of the board.

Mr Kruger: I am delighted that you did, for the very simple reason that what had happened—I did not even have a board at that time and I had just been appointed. I was a little upset about some of the things I saw in Bill 2, the lack of the ability to phase things in, and I have said that publicly. So I was pointing out to the Treasurer, as I had, that the insurance companies were coming—and just the way our act read, they had every right—160 companies were coming and saying, "Okay, we want to have a capped rate hearing."

That meant I did not even have a board—this was before July, if you notice the date on that letter. I would have had to have 160 companies coming in, asking for a capped rate hearing. Some of them were asking for 40 per cent increases and so forth, so I had indicated to the Treasurer, "Look, you should know that there is a problem out there." I did not say, "Bring in 4.5 per cent."

I think I had a duty to the minister to inform him that there was a problem developing, and what I said was: "I have every intention that, as soon as I get a board"—because I was very upset about the fact I did not even have a board until July—"as soon as I can, I want to go through these four pillars"—which I have already talked about—"and I want to do that because I have to have a standard." I could not have a capped rate increase with 160 companies when they came in unless I had some standard, unless I knew the algorithms we were going to use, the classification system and so forth.

That is what the communication was about. How that got blown up—however, I am philosophical about these things too, Mr Runciman, and I know how they happen and I live with them.

The Chairman: I am going to inquire if there are any members of the government who wish to ask questions of Mr Kruger. If there are not, then

perhaps we could agree that 10 minutes more might be given each of the other members. I have sort of arbitrarily set it at 20 minutes; 30 minutes is probably the outside figure if the government does not wish to ask any questions, then we would get on with it.

1620

That would take us to 4:35 and leave enough leeway to ensure that we fulfil our unanimous consensual decision yesterday to get this bill finished today. Is that agreed? Do we have unanimous consent to that effect? Do I hear any nays? No nays being heard—

Mr Kormos: No, Mr Chairman. Only, if you do not mind, that would take us to 20 or perhaps 18 minutes to five. We are talking about half an hour at the outside, as Mr Runciman indicated yesterday, for consideration of this clause by clause—it is not a lengthy bill—so why do we not be a little more flexible?

The Chairman: All right. How about 4:45? Do we have unanimous consent that at 4:45 we will proceed with clause-by-clause in order to fulfil our unanimous consent yesterday that we complete this bill by six o'clock?

Mr Kormos: I want you to have unanimous consent, which is why I am going to suggest that you pick the figure of five o'clock, which gives a full hour. That would make it unanimous; that is something we could all live with.

The Chairman: Well, is there unanimous consent for five o'clock? That is on the understanding, Mr Kormos, that we will complete the bill before the six o'clock adjournment. Is that agreed?

Mr Kormos: Yes, sir.

The Chairman: All right. We have unanimous consent. We will continue to five o'clock, but the bill will be completed by six o'clock or before the bells ring at o'clock.

I am going to go back to Mr Kormos, Mr Runciman, and give him a bit more time and then come back to you unless there are some government members who wish to ask any questions.

Mr McGuinty: I am curious. How can you assume there is unanimous consent that we will finish by six?

The Chairman: I am assuming unanimous consent that we will be completed by then. In other words, if the matter is still in discussion at five to six, one can conclude that is the time at which a vote would be called on all sections. Okay?

Seeing no members of the government who wish to ask any questions, Mr Kormos, go ahead. I will divide the time equally between you and Mr Runciman.

Mr Kormos: Again, Mr Kruger's staff, in so far as my contact with them was concerned, were excellent and eager to assist in any way, shape or form.

I know that numbers of people from across the province called into the

board. I am wondering if Mr Kruger could tell the committee how many phone calls they received. I suspect it would be significant.

Mr Kruger: Are you talking about hearing 4? We had quite a few. We received 2,700 telephone calls from members of the public and we included a list of their concerns and who wrote in. We had 386 written submissions and we put exhibits in our report to show what those exhibits were.

The board received 22 petitions, and these petitions contained approximately 65,250 signatures. This includes the petitions submitted by Miss Schaeff, in themselves 63,457. We went down the list of those people. Mr Reycraft, MPP, Middlesex, presented a petition addressed to the Honourable the Lieutenant Governor and the Legislature. It was signed by 1,113 residents of the riding of Dufferin-Peel. Members of the public intervened throughout our hearings. We took testimony from something like 55 individuals. It had a very thorough input.

Mr Kormos: Further to those phone calls, I know the board received phone calls by people who saw the board as perhaps the last resort; that is to say, people who had grievances about their insurance and what was happening, be it seemingly arbitrary nonrenewal, excessive rates, that sort of thing. I wonder if Mr Kruger or anybody kept any log of the numbers of calls received of that type, people who had problems.

Mr Kruger: We did not specifically log the calls, but we did have evidence from a variety of people who ranged the spectrum from young adults, people who were just out of school and who gave some very interesting testimony. They also gave the bad treatment that some of them had received. In all these cases, after they gave their evidence, we took the individuals to a member of staff where they gave more detail, and then we called the company to see if we could resolve the cases.

We have a couple of very interesting characters who have been at all of our hearings. One of them came in with a skull and crossbones. You might have seen that person with the flag.

Mr Kormos: That is right. That was the Jolly Roger. If there was anything more appropriate to the insurance industry, it was the concept of piracy. He thought so and I agree with him.

Mr Kruger: Yes, he brought that in. Of course, we also had members of the Legislature. You, Mr Kormos and Mr Runciman made presentations. We had the young people, and some of their ideas were very good. They talked, as a matter of fact, rather surprisingly, about a graduated licence that people ought to have. We put all that down in the report.

We had a lot of complaints from people who had been driving for a long time and there was no recognition of their good driving record. There is a difficulty with some of these things, because there is a balance one must strike. In New Jersey, which has the best data of all, in every 11 years of driving, you can expect to have a collision claim. That is the statistical average. In every 28 years of driving, you can expect to have a bodily injury claim. That is from jurisdictions in the United States.

We heard from a lot of people who said, "I've been driving 30 years and I don't get a break." We heard from senior citizens who were particularly incensed about the fact that age was taken out of the rating. We heard that at length. What they were arguing was not so much that they were necessarily

better drivers but that they were on fixed incomes, so there was a social component to it.

We heard complaints about tow-truck operators. We particularly heard complaints about the body shops, how there seemed to be two standards. If you went in, the first question you were asked was, "Is this an insurance claim?" If it was an insurance claim, there was a certain bottom line.

Yes, we heard all of those complaints and we followed them through as best we could.

Mr Kormos: I do not know whether Mr Kruger is aware that the Attorney General, or Ian Scott as he was known then, wrote a learned article that was published in the Canadian Bar Review which, mind you, dealt with regulatory boards and environmental issues. The Attorney General wrote in this very learned article that it was imperative that consumers have representation before regulatory boards to avoid the boards' receiving but one perspective; that is to say, to avoid the concept of industry co-option, which the Attorney General, as the author of that article, indicated was a process, a phenomenon that occurred without that consumer representation. It was a very forceful position by the Attorney General in the Canadian Bar Review article.

The Chairman: We will pass on congratulations to him when next we see him.

Mr Kormos: Please. It is a very learned article. It was undoubtedly the influence of Andrew Brewin, as compared perhaps to more recent or current influences.

Especially in view of the fact that the government in April 1987 had promised a consumer advocate to appear before the board, I am wondering if Mr Kruger, appreciating that the Consumers' Association of Canada was there, has anything to say one way or another. In his view, would the process have benefited from a government consumer advocate, as was promised in April 1987?

1630

Mr Kruger: I have no problem in responding to that. It was somewhat peripheral to the reference hearing that we have just been through. But we went to the great trouble of asking all the witnesses, and these were the regulators, the senior people from Michigan, New York, New Jersey, Kentucky and Pennsylvania. We also asked those who were well informed, such as Professor Priest and people like that, as well as Mr Hunter, who was there—a delightful man—what they saw.

The question went like this: "Has there ever been a demand for an Ombudsman or somebody like that for insurance in your area?" The response came back very clearly: "No, because the public looks upon the regulator as the Ombudsman." The criticism that would be made is that we are just starting to feel our way into the regulatory regime in this province, as compared to the United States. But we asked that question. The only thing they did, and this is in the evidence that came forward, was that there was a demand for an Ombudsman for senior citizens.

That was the evidence we received there. I cannot answer it any further than that. That is a policy question, what the government might or might not have said. I can only tell you what is in the US jurisdictions. If you have a

proper regulatory regime that is a tough regulatory regime, that problem seems to go away, at least in their jurisdictions.

Mr Kormos: I recall Mr Kruger, I believe—if it was not Mr Kruger, it was certainly others who were participating in the process—describing insurance basically as a system of subsidization. That is to say, the only way to avoid any degree of subsidization would be to generate a system whereby everybody was self-insured. Otherwise there is always, as it was explained to me, the factor of subsidization from one class or one group of persons to another and from individuals within that class.

I am wondering if Mr Kruger can comment on the nonacceptance of a stronger or firmer bonus-malus approach in rate-setting. In view of the fact that subsidization and cross-subsidization is a reality in the concept of pooling of risk, I am wondering why the board did not adopt a stronger bonus-malus model.

Mr Kruger: That is very simple. We covered that very clearly in our first hearing. You see, in order for us to set rates the way Bill 2 was structured, we first had to have a classification system. That was the first pillar. If we could have set rates without a standard classification system in place, we would have done that. That is the first step we had to do.

However, we recognized, from the substance of what we heard, that we would have to inquire into a bonus-malus system. You will find that as one of the key recommendations in our first report. We also said we would do that and we would start those hearings, preferably in the fall of this year, so that we might have something in place.

We recognize that there are some problems with it. One of the problems is that there is insufficient malus in the system to take care of the bonus. In the United States the government merely says to the insurance companies, "Your system of classification will have in it merit rating and will take care of something like that." That is still a very important thing to be looked at.

As a matter of fact, many of the average consumers favour some form of that. That is an inquiry that is yet to be made by the board, but I would think something along those lines is certainly important and should be reviewed. As to the form it takes, I think we have to balance the system. Just as you said, it is a pooling of risks.

Mr Kormos: Section 8 of Bill 10 permits regulations which permit insurers to increase their cap rates, exempt insurers and Facility Association and permit Facility Association to increase its rates.

Section 3 places the onus on the OAIB to ensure compliance with Bill 10. In view of the expertise that the board has acquired or developed over the last period of time, I am wondering if Mr Kruger could indicate whether or not the board would be prepared to be responsible for the determination of any increases beyond the capped rate; that is to say, in a public manner as compared to the manner contemplated by section 8 here.

Mr Kruger: If you are talking about clause 8(1)(a), that goes a little bit beyond the board. That is company-specific. It is also to permit a new insurer that wants to come into the market. That is beyond our jurisdiction. That is the superintendent's jurisdiction. He would have to be concerned about solvency and so forth, and the average amount of money they have to put up today, I think, is somewhere in the order of \$25 million; at

least that is the evidence before us. So that would go beyond any authority that we had.

Clause (b) is no more than a lift out of our present act. We have already sent a report on the commercial rates, which I think you have received. I sent a letter to the minister, in view of his announcement and the fact that Bill 10 was going forward, and pointed out we no longer have a classification system. I would think this is something that has to be reviewed. That is rightly the job of the government at this point in time, because until such time as product reform comes in, I would not see us getting involved in that.

As far as the Facility Association is concerned, yes, the Facility Association, as it said itself elsewhere, is to be considered as an insurance company and insurance companies are capped at 7.6 per cent. I have no idea how long the government will take---this is a very complex subject---as to when the bill will come in, so I think it is rightly in its hands.

What we will do is ensure that sections 2 to 18, I think it says there---that is to permit us to have compliance. As a matter of fact, we have already started that. You should be aware, and this might be of interest to you to know, Mr Kormos, that we have sent out and we have given a whole list of things that they have to do in order to comply. It is quite precise, what we have done. For about 70 per cent of the premiums that are written, those companies have now replied, but there are a lot of things we are finding in their submissions, because they have never had to put submissions like this before in this manner, and we are following up with them. They are just waiting for the bill to be enacted before the rates become effective.

That does not fuss us at all. We think it is rightly there. I think the roles of the board and of the minister, as clearly outlined here, are quite proper in the circumstances.

The Vice-Chairman: Mr Kormos, you have about two minutes left, just by way of warning.

Mr Kormos: Thank you. Is this just like in the House, that if I get my question in, he still has to answer it? I know I am using up my time now.

Hon Mr Elston: No.

Mr Kormos: The minister says no. That is the way it has been all along; make up the rules as we go. I am getting accustomed to that.

In any event, does the board expect to ever be restored to the position it was in prior to Bill 10? That is to say, does the board at this point expect itself to be permitted to carry on with the process that was interrupted by Bill 10?

Mr Kruger: The board does not know. That is a decision of the government. The government will make that decision when it sees the type of product reform. I do not even know that the government would really know that at this time, until it gets our report and until it has decided on product reform. There would be some changes. No doubt product reform would cause that.

In fact, where we first mentioned looking at no-fault and so on in our hearings, it was always recognized that would have some type of an impact on classification systems.

I do not know. I think we are going to have to wait for product reform. I do not know. It is a simple, short answer.

1640

Mr Runciman: Talking about product reform, Mr Kruger, what is the status of your report? When do you expect to deliver it to the government?

Mr Kruger: I have 7,400 pages of testimony, five three-ring binders of exhibits and no fewer than four actuaries who cannot agree one with the other on even the assumptions they have put forward. It took us three days to go through it and do that. We should have a draft somewhere around the end of the month and will get it out as soon as we can.

Mr Runciman: As I understand it, you are not making any recommendations in this report. You simply are giving the pros and cons of each proposal that was delivered before you.

Mr Kruger: It is inevitable—but no, we are not giving recommendations—that you have to balance the evidence and you make a finding or whatever you call it. It is not a recommendation. It does not have the force of that. It is advice to the government. We fully intend to say: "This is what it showed. This is our best judgement. This is why we have come to that judgement. You can disagree with it all you like, but it is a finding." The government would not be bound by that.

Mr Runciman: The government is not bound by anything, apparently. As chairman of the board, how are you going to feel if indeed the government really does not come down with the product reform that falls in line with your findings?

Mr Kruger: There is one thing I have learned in government through many, many years and that is that the elected official has the final say.

Mr Runciman: You sure have had that driven home, have you not?

Mr Kruger: Yes, I had it driven home. Look, I must tell you, compared to Metro council, this government is a bunch of gentlemen. I think we will give it our best shot. We fully expect that the government, I imagine, will not take all we have to say. We will be blunt. We will have integrity about it. I think I have to wait to see what the government will do.

Mr Runciman: I guess I am kind of curious. The chair may not want to let me pursue this, but when you talk about your report's perhaps being disregarded, the Minister of Financial Institutions indicated to us yesterday that his officials are looking at a whole range of options and certainly are not restricted to what the Ontario Automobile Insurance Board was looking at, so that indeed we may see something totally different from what the board spent all that time and money looking at. Your report could be filed in the ash can, in essence.

When the minister announced his intent to bring in legislation with Bill 10, you were quoted in the papers—and I am paraphrasing; I cannot recall the specific quote—indicating you were upset with respect to the way this was handled and that the board's recommendations in effect were overturned. And here I am paraphrasing again, but you said if something comparable happens again that you might resign.

Mr Kruger: I thought you might ask that. I happen to have the article with me. It just so happens that there were a couple of very important little things that were left out of the quotes. You have to take the quotes in context. What I did say is—and this is right—"My concern is not this time but it could be if this continues on." Then I went on to say, "I have no intention of resigning or anything like that, I have been through the wars before." That is the quote.

What the reporter did is make up from that what he thought that meant and he interpreted those words. I did say, and this is true, "Certainly it hurts." And the reporter was saying, "Don't you feel as though you had the legs cut out from underneath you?" The one thing that I did say that he did not put in was, "I've been in the position where in the last day someone said I've had my head knocked off, I've had my legs cut off, I've had my arms cut off. The only thing I can say to you is, 'Thank goodness they left my torso because I do like my beer.'" That never got into the paper.

When any board goes through what I have have been through, I would fully expect that there would be parts of what it has to say on which the government would say, "Well, thank you very much," but there would be parts that it would listen to, too. That is perfectly normal and it is natural.

As far as resigning, oh, no. I have said to people that I do not want to resign from the government. I want it to fire me; then I can move for wrongful dismissal. I think I am worth a year and a half.

Mr Runciman: That is pretty common these days. Getting back to Bill 10 and the comment you made earlier about rate inadequacy, you indicated that in your view—and I share it—in many instances rates are inadequate. I questioned the Minister of Financial Institutions on this yesterday in respect to how he and his officials arrived at the figure that has been incorporated in Bill 10, the 7.6 per cent increase. He suggested that this was the base rate that the board had—

Mr Kruger: The benchmark. That is right.

Mr Runciman: —the benchmark figure that the board had. But, of course, the board had also built into that a fair amount of flexibility above and below. In dealing with the question of rate inadequacy you should have an understanding of this, an appreciation as much as anybody in the province right now. How is this 7.6 per cent figure going to deal with that very real rate inadequacy?

Mr Kruger: When you talk about rate inadequacy, when you set rates you are attempting to set rates prospectively. In setting the benchmark at 7.6, we made a judgement that there was an anomaly in 1987. In other words, the loss costs had gone right up and they were not going to be repeated in 1988. So we went back nine years and took the—

Mr Runciman: A lot of people disagreed with that, by the way.

Mr Kruger: Well, the industry totally disagreed with it, but we have to go on the basis of the data that we have before us. We said: "All right. Based upon that, we will set the benchmark and we will put a range around the benchmark to give some flexibility to the companies."

The 1988 figures are now coming in. We have seen in draft those 1988 figures, and they indicate to us that-1987 was not an anomaly; that there is a

trend there. That being the case, the projection prospectively for the 7.6 per cent would be inadequate in the year 1990. That is what I mean by rate inadequacy. The measure of that inadequacy on an industry-wide, uniform basis has yet to be computed, but there is inadequacy within the system.

When you say that, you say that is inadequacy based upon an average insured. For some people out there, the customer has been getting a break. It is just that simple. Some of them have been paying too much, and that is what averages mean. That is the unfortunate thing.

Mr Runciman: You raised an issue when you treated 1987 as an anomaly. Many people disagreed with you and, I guess, it is my own view and I am sure the view of many of us that you did that so that the increases that you were going to be bringing in would certainly not indicate a trend and would perhaps be more palatable politically.

Mr Kruger: No. Let me answer that. There was no politics involved. In the absence of being able to phase things in, based upon the parameters of the legislation that we had and upon the actuarial evidence that we had, that was the best judgement that we could come up with at that point in time. As far as politics is concerned, it would not be politics.

If there was any concern in our minds, I guess, there would have been the question of affordability of rates. I do not think that is politics. I think that is recognition of the people who appeared before us, particularly those who tend to be senior citizens and those on fixed income. We had a strong feel for that because we were concerned that age had to be eliminated and we could not afford to have a surrogate for age; otherwise our effort would have been challenged.

1650

Mr Runciman: This ties in with what Mr Kormos was expressing as a concern about section 8 and regulations; rate-setting. Again, I asked the minister yesterday about the possibility of further increases during the life of this bill. I stand to be corrected, but I think he indicated that he did not foresee any additional increases coming forward during the life of this bill. Obviously, he is hoping that product reform can be brought in at an earlier date than 31 December 1990.

I would like to hear your views. You have talked about rate inadequacy. We could quite feasibly see this before we are into product reform and all of the parallel agreements, I gather, that have to be made with various provinces and so on. I gather it is a pretty complex matter we are getting into in terms of product reform.

Mr Kruger: Product reform could be quite complex, yes.

Mr Runciman: Just getting back to rate inadequacy, do you share the view that it is going to be quite appropriate to go through the life of this piece of legislation, perhaps to the fall of 1990, without further increases?

Mr Kruger: I think that is a little bit of speculation. It poses a hypothetical question as to timing. I am in no position to judge that. I could not even tell you now the measure of inadequacy until we have had a hearing.

Mr Runciman: You indicated earlier, you said quite clearly there is a rate inadequacy.

Mr Kruger: That is right; there is a rate inadequacy. If you go forward, I would say in the spring of 1990 or something like that, there will be a rate inadequacy in the system. The measure of how much I do not know, not at this point in time.

Mr Runciman: You have a pipeline to the insurance companies; you are talking to them all the time.

Mr Kruger: Oh, I know what they say.

Mr Runciman: I am concerned about what they may be saying in respect to the fact that we are seeing companies now pulling out of certain areas of the province in terms of offering auto insurance, we are seeing increasing numbers having a look to Facility, and I guess I am concerned, going down the road in a few months time, if we have the minister saying he is adamant that we are not going to see further increases. You are saying there is rate inadequacy and others are saying there is rate inadequacy. Where are we going to end up with this thing?

Mr Kruger: I do not know. It is strictly a matter of timing. I just know that we are working very hard and I know the ministry staff is working very hard to keep to the schedule and to the mission that is being put forward to them by the minister.

I think that is a question for another time. I can say this clearly, that you will have a degree of rate inadequacy that will occur in 1990. There is no question about that. I do not know the measure of that, but I think that is a question for another time.

Mr Runciman: You do not think there is any rate inadequacy in 1989?

Mr Kruger: Oh, yes. With some companies there certainly is. There is no question about that. With other companies there is not. In fact, some companies have to decrease the amount of their rates, because when we talk about averages, we bring in an average premium. There is a rather major company that had to do that.

Mr Runciman: Pursuing that a little further, you are saying there are certain companies that are faced with rate inadequacies and others that are not in respect to the 7.6 per cent. Is there not a way that, perhaps through Bill 10, the companies that are faced with those rate inadequacies, those particular situations, could be addressed, rather than through tarring everyone with the same brush and having this broad application?

Mr Kruger: I think that in Bill 10, clause 8(1)(a) would give that right to the government to do that. After all, we did our process. This is now a government process.

Mr Runciman: Yes. I guess that is why I have difficulty with it in that sense as well. I cannot see that the government or the ministry would be in the position to do that.

Mr Kruger: Let me give you an example for a moment of what could occur that concerns me a little bit from the point of view of putting an industry cap on. You have some companies out there that, as a result of their cash flows, were in somewhat of a difficult position before and there might be a question of solvency, not as a result of what the government actually did. You see, when I first became the chairman, I had some company people come to

me and say: "I need a 40 per cent increase because in order to meet my targets for solvency, I have to get another \$1 million and put it in. I cannot get it from my shareholders, so I have to get it from my rates." These are smaller companies.

The worse thing you can do with a company like that—and that is what has occurred in this market. You will notice how there have been mergers going on. Some of those companies have been getting somewhat to the fringe. The worse thing you can do is have the board have a big public hearing—because that is what we do; we hold public hearings; it is out there—and be talking about a company that might be on the borderline with that, when at the same time they are in the process of asking for a rate increase. But they are trying to do a merger with another company. That is of concern to me, because I do not think that benefits the consumer and it does not benefit the market. In some of the smaller companies, that is the case.

For some of the larger companies, well, you have a statement. It is on the public record. State Farm, for example, said quite clearly: "We are in this market to stay in the longer term. There will be, we are sure, a light at the end of the tunnel." That is why they are in the market. The big insurers are the same way.

That is one of my concerns about the moment you give something to the board. It has been a very successful process. It is a good process that we follow, but I do get concerned about instances like that.

Mr Runciman: I have difficulty understanding how the government, the executive council, is going to deal with the individual applications or requests from—

Mr Kruger: I do not think there would be that many.

Mr Runciman: Perhaps it is something I could pursue with the minister or with the superintendent of insurance.

Just one final question: Have there ever been any discussions at the board level or with you as chairman personally in respect to the board's functioning, or a role for the board, if indeed at some point in the future the government opted to assume the responsibility for auto insurance in the province?

I know I have certainly heard speculation with respect to the establishment of the board that, in effect, it facilitated the future move to the government operation of or selling of auto insurance. Have there ever been discussions along those lines?

Mr Kruger: No, and as a matter of fact, I have been around government circles long enough to know that this board is somewhat on the conspiracy theory. There has been no indication from anyone that I have spoken to that this is the intent. In fact, it has been clearly stated, I think, on the record of the various ministers that this is not their intent.

If the government of the day, whatever government it might be, at some future time is forced into that position, I think it will be the conditions in the market rather than any statement of philosophical intent.

No, there will be no discussions at all. I can say that unequivocally.

Mr Runciman: I guess I am not assured by ministerial statements. We heard them say on many occasions that your board was a completely independent board and that the ultimate decisions in terms of rate-setting would be made by your board, and we saw that this certainly was not the case. Thank you.

The Chairman: Are there any amendments to the bill? No amendments to the bill. All right. Shall subsections 1(1) and (2) carry?

Mr Kormos: Sorry, before that—

Mr Kanter: I believe we are into the vote on the matter. I believe we should conclude the vote on the section.

The Chairman: I do not know what Mr Kormos is going to say until I hear what he is going to say. It may be a point of order.

Mr Kormos: A very serious matter.

The Chairman: Yes.

Mr Kormos: I filed with the chair a substitution notice requesting—

The Chairman: We will deal with that first.

Mr Kormos: That is right, of course.

The Chairman: Mr Kormos filed, at 4:55 or thereabouts—the clerk would have the exact time—the following.

"This is to inform the chairperson"—I guess that is me—"of the justice committee that Mike Farnan is substituting is substituting for Howard Hampton today." It is signed by David Cooke, the whip. I understand Mr Hampton has left the environs.

Mr Kormos: He is not here any more.

1700

The Chairman: No, he has left Queen's Park. The rules clearly state, and I can quote you the rule, that a substitution must be received within half an hour of the time the committee starts to sit. However, by unanimous consent we can do anything. Do we have unanimous consent that the rules be waived to allow Mr Farnan to vote, and then we can get on with the vote?

Mr Kanter: I would like to speak to that because there was an agreement by all parties that we complete this matter, we complete the vote between five and six this afternoon. Mr Kormos was party to that and I assume he has communicated that to Mr Farnan.

The Chairman: I do not think—and maybe I can get clarification from Mr Kormos—he is looking for anything other than Mr Farnan being entitled to vote. He is shaking his head in the affirmative, so if you give unanimous consent we can get on with the vote.

Mr Kanter: On the understanding that Mr Farnan is bound by the same agreement Mr Kormos made, we would be prepared to consider unanimous consent. But I think we have to have that understanding.

The Chairman: It is agreed. Mr Farnan is shaking his head in the affirmative.

Mr Kormos: One moment. He is certainly not a puppet who does as he is told.

Mr Farnan: Thank you.

The Chairman: He shook his head in the affirmative. We are not looking for a puppet.

Hon Mr Elston: He's got his card from the Bank of Montreal.

Mr Kormos: I am looking forward to it, and if you mind your P's and Q's, you might just get one too. But there are some prerequisites.

The Chairman: Let's get off the plastic kick.

Mr Kormos: There is no intention to change the schedule. Why does Mr Kanter even suggest that?

The Chairman: So is there unanimous consent, in light of that indication by Mr Farnan in the affirmative that he is ready to vote?

Agreed to.

Mr Kruger: Mr Chairman, am I excused?

The Chairman: Yes, Mr Kruger. Thank you very much, by the way.

The Chairman: Shall subsections 1(1) and (2) carry?

Those in favour? Those opposed? Carried.

Section 1 agreed to.

The Chairman: Shall subsections 2(1) and (2) carry? Same vote.

Section 2 agreed to.

The Chairman: Shall section 3 carry? Same vote.

Section 3 agreed to.

The Chairman: Shall subsections 4(1) and (2) carry? Same vote.

Section 4 agreed to.

The Chairman: Shall subsections 5(1), (2) and (3) carry? Same vote.

Section 5 agreed to.

The Chairman: Shall subsections 6(1), (2) and (3) carry? Same vote.

Section 6 agreed to.

Section 7:

Mr Kormos: I have a question.

The Chairman: Which item do you have a question on?

Mr Kormos: I am concerned about subsection 7(3).

The Chairman: Perhaps we can then say, shall subsections 7(1) and (2) carry?

Mr Kormos: In view of what subsection 3 purports to say, do you not think it is more important that there be some explanation as to subsection 3, because obviously subsections 1 and 2—

The Chairman: Create the offence? Does it make any difference?

Mr Kormos: Sure, because they create an offence. "A prosecution for an offence under this Act shall not be instituted except with the consent in writing of the board." I am wondering if some rationale can be made for that subsection 3.

Hon Mr Elston: As I recall, it is not unusual in the Ministry of Financial Institutions, for instance, for the minister or somebody who has carriage of regulation under various statutes to actually consent to prosecutions under various statutes.

I do from time to time. I am asked from time to time under the auspices of, for instance, the Ontario Securities Commission to provide consent to prosecution. So this falls in line with that general theme that the regulator having access to information have a prima facie understanding of whether or not an offence occurred. Then it would of course go on to be issued as an information by the appropriate court authorities.

Mr Kormos: Having heard the minister makes me all that much more interested because we have got the board monitoring for compliance. I trust that the ministry is not going to change its position in terms of section 8. The minister having said what he did, why would it then be the board that provides consent as compared to the minister?

Hon Mr Elston: Because the board has access to the information as the filings occur and as the activities are undertaken with respect to rates and otherwise.

The Chairman: If you will note, the board is really, if you can call it, the mover throughout this entire bill.

Mr Kormos: The mover but not the shaker, because section 8 is reserved to cabinet and the ministry appears to reject any suggestion, when we get on to section 8, that the board assume responsibility for variations or exemptions from the requirements of the act. But then at the same time there is a great deal of power left to cabinet.

The Chairman: You have asked the question and the answer has been given. You may not be content with it, but that is it.

Shall subsections 7(1) through (4) carry? Same vote.

Section 7 agreed to.

Section 8:

Mr Runciman: With respect to clause 8(1)(a), "permitting insurers to increase their capped rates in accordance with the regulations," I would like to hear from the minister or the superintendent in respect to how they see this working. I think the prior discussion is relevant as well. The minister indicates that the board is the body that is going to have the facts. How do you see the executive council dealing with this?

Hon Mr Elston: With respect to the rates themselves, for instance, there has been a report on commercial hearings and there is some indication that while we await product reform, we may have to take steps with respect to certain other classes of insurance. We can then make regulations that will work in the reports that the board has made with respect to their hearings already undertaken. So we, in fact, would receive some advice and move on it. Otherwise the bill, in effect, limits everybody to a 7.6 per cent increase.

Mr Runciman: Right. Mr Kruger in his testimony indicated that there are certain companies out there who are indeed facing rate inadequacies. Are you saying that you are going to rely on advice or information provided by the board? Is there no application formula or process that you are looking at whereby a company that feels it is in need of additional funds can justify it, based on what the board has prepared?

Hon Mr Elston: I think it is important to understand that in respect of a need of funds there are various sources for funds to be directed into a company. Together with the auto board as it sees the activities of the insurance company vis-à-vis its premiums, etc, the superintendent also is in a position to see whether there is an effective amount of capital available.

It is not, I think, fair to say that the premiums are the sole source of support for the activities of the company. There is also, of course, the ability of the company to make certain changes from a management point of view. There is a whole series of things that could be taken into consideration here, some of which are directly related to what the auto board will be looking at and others which would not necessarily be so related.

Mr Runciman: So over the next period of months it is possible that we could see individual insurance companies receiving increases above the 7.6 per cent cap?

Hon Mr Elston: I do not expect it.

Mr Runciman: You do not expect it.

Hon Mr Elston: It would be a very big exception.

Mr Runciman: Despite what Mr Kruger has indicated about great inadequacies?

Hon Mr Elston: Basically Mr Kruger had indicated that when he went through and saw the classification plan as it was shaping up and the implementation of the new class plan, plus dealing with his information in addition to the class plan, the benchmark of 7.6 per cent seemed like a reasonable amount of money to provide for a reasonable premium adjustment without the classification plan.

I think it is reasonable to assume that the benchmark will accomplish a

good deal towards assisting companies. I do not expect the companies to agree with us fully. I expect continued pressure publicly for more premium dollars to be put into the system.

I have at the current time made a decision that 7.6 per cent seems like a reasonable number, bearing in mind that the class plan is not being changed and bearing in mind that we are also doing a lot of work towards product reform. I do not expect everybody to agree with me, but I do think that we are getting a reasonable increase under the circumstances. People may choose to say that they want more, but I cannot help that.

Section 8 agreed to.

1710

Sections 9 and 10 agreed to.

Section 11:

Mr Kormos: Considering the timing, that it "shall be deemed to have come into force on the 17th day of April, 1989," and that the policies we are talking about are policies which commenced after 31 May, are we or is the ministry prepared to tell people that the deeming provision is not going to change the rate of policies sold prior to the date that this bill becomes law, or have insurers been instructed that they can cap or add 7.6 per cent, relying upon the passage of the bill? Are insurers currently charging 7.6 per cent above their previous rate?

Hon Mr Elston: The insurers should have only taken the most recent increase before the 7.6 per cent, ie, the 4.5 and 4.5. Up until that time and until the implementation of the class plan under the previous board order, there could have been no increases. The reason this takes effect on 17 April is to lock into that. That having been done, we would expect only a 7.6 per cent increase over what rates were being charged on 17 April.

Mr Kormos: Okay, but wait a minute. If I go and insure my Acadian tomorrow morning—

Hon Mr Elston: You do not have one.

The Chairman: You have a Camaro or a Chevette.

Mr Kormos: General Motors, one or the other. I have the truck here today. If you want to move anything, let me know.

Hon Mr Elston: No truck nor trade with the NDP.

Mr Kormos: Every once in a while I have to cart some of this, whatever, that gets scattered around here so much.

Hon Mr Elston: Testimony.

Mr Kormos: That is right. You need a pickup truck. That is why you wear the cowboy boots, so it does not go up inside your shoes.

In any event, if I go out and insure my vehicle tomorrow, unless the insurer is a thief or crooked, presumably I am getting a rate that is frozen, but for the 9.2 per cent compounded increase. Is the passage of this

legislation three weeks, four weeks, a week or however long down the road going to result in any surcharge in view of the deeming retroactivity of it to the policy that I purchase tomorrow?

Hon Mr Elston: I do not really know what you mean by surcharge. I do not anticipate any. I mean, I do not know what you mean by surcharge.

Mr Kormos: Is my insurer going to say: "Look, the price I charged you on June 22 or 23 is now upped by 7.6 per cent. Cough up the 7.6 per cent"?

Hon Mr Elston: It should not have been over what he had in place for you as of 17 April, unless you have had an accident or something. The 17 April date is designed to fit in with the previous locking of the 4.5 and 4.5. That is why we went back to 17 April.

Mr Kormos: Is there no retroactivity of this bill and not intended to be any for policies purchased before the date that this bill becomes law?

Hon Mr Elston: I think that is right. It has effect as of 17 April for policies commencing 1 June. Where are we today? 20 June. I guess, in fact, it would have some effect for those policies of 1 June and forward. They can only take a 7.6 per cent increase.

Mr Kormos: Have policy purchasers on, let's say, 1 June or 2 June been paying the frozen rate, or have they been paying the frozen rate plus 7.6 per cent?

Hon Mr Elston: They should have been. They probably were paying a 7.6 per cent increase on that date. If you had got notice the previous year, you should probably have another 7.6 per cent on top of that.

Mr Kormos: Even before this became law?

Hon Mr Elston: They have been working with this as though it were in effect, because we made the announcement as of 17 April. The bill has effect as of 17 April and the companies have been processing their renewals, I understand, as though it were a 7.6 per cent increase. They did not go forward to implement the class plan, as was indicated yesterday during our discussions.

Mr Kormos: Okay. So insurers have already been charging as of 1 June a 7.6 per cent increase.

Hon Mr Elston: That is my understanding.

Mr Kormos: Notwithstanding that the bill is not law?

Hon Mr Elston: That is right. On the assumption it would come through, otherwise they would have been implementing the class plans. Mr Runciman asked yesterday what the practical effect was and were we going to be prosecuting people who did not implement the class plan as of 1 June, bearing in mind that there was a technical requirement for it.

Mr Kormos: So we are whistling in the wind, yesterday and today, because the 7.6 per cent increase has already been permitted insurers, notwithstanding that the committee has not—

Hon Mr Elston: An increase over 7.6 per cent without changes of circumstances and otherwise has been prevented as of 1 June.

Mr Kormos: But a 7.6 per cent increase has been permitted as of 1 June, regardless of what is discussed in this committee, regardless of what decisions are made by this committee by way of any potential amendments to the bill, regardless of what the House does with the legislation.

The 7.6 per cent increase has been permitted insurers, notwithstanding what may or may not be said in this committee, notwithstanding what decisions this committee may or may not make, notwithstanding what the members of the House may or may not have done with this bill.

Hon Mr Elston: As of 11 May, this bill was in front of the House. As of 11 May, the expression of a 7.6 per cent cap was in front of the public. In fact, as an interim measure I think the people felt it was not an unreasonable assumption that a 7.6 per cent increase would be allowed while we studied the legislation required for product reform.

The Chairman: Second reading would have been agreement in principle as well, and that was received, I am sure, before that.

Mr Kormos: Okay.

Section 11 agreed to.

Section 12:

Mr Runciman: Just on section 12, I wondered about the appropriateness of the title of the act, that is all. I wonder if it should not be called the Humiliation of the Ontario Automobile Insurance Board Act.

The Chairman: Is that an amendment?

Section 12 agreed to.

Preamble agreed to.

The Chairman: Shall I report Bill 10 to the House?

Mr Runciman: Recorded vote.

The Chairman: All right. Recorded vote asked for the report of Bill 10 to the House. Hopefully, I will get one through. I have not had much luck on any of the bills I have reported.

The committee divided on reporting Bill 10 to the House, which was agreed to on the following vote:

Ayes

Chiarelli, Kanter, Mahoney, McGuinty, Morin, Offer.

Nays

Farnan, Kormos, Runciman.

Ayes 6; nays 3.

The Chairman: I understand there is going to be a subcommittee meeting tomorrow.

Mr Kanter: First, people who have been involved in this issue may want to leave. With respect to the subcommittee, I have been trying to arrange one. Mr Hampton of the NDP has agreed. I have not been able to contact Mr Sterling of the Conservatives. I understand he may be available. If he is back, we will have one.

The Chairman: All right. I will not be here, as I have indicated to the clerk. If you hold it, you hold it.

The other thing is that we will have information re Henderson, hopefully on Monday, on your desk during question period. Susan will have hers, I understand, before that. We are adjourned until Monday, when we should be doing Henderson.

The committee adjourned at 1720.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988

MONDAY 26 JUNE 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witness:

From the Association of Provincial Criminal Court Judges:

French, Paul J., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 26 June 1989

The committee met at 1544 in room 228.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
(continued)

The Chairman: I recognize a quorum. You have before you information that was passed out to you in the House from Susan Swift from research. I also understand there is some more information. There is also information received from Management Board of Cabinet.

We are now at that point where I am looking for some direction from the committee.

Mr Polsinelli: I am glad you asked. Perhaps I can ask for some direction from the chair. Can you advise us as to when these committee meetings are supposed to start?

The Chairman: After routine proceedings.

Mr Polsinelli: We started 45 minutes late today. This is the second time that I recall this has happened. I would ask that perhaps the opposition members keep in mind that this committee starts after routine proceedings and that they could extend to us the courtesy of advising us that they are going to be delayed, as a first point.

The Chairman: All right. Is that the extent of your motion?

Mr Polsinelli: No. That was my first point. I thought it was important that we got that on the record.

The Chairman: All right. Let's hear the substance now.

Mr Sterling: Three-thirty; it is not after routine proceedings

Mr Polsinelli: Routine proceedings finished at three o'clock

The Chairman: It is after routine proceedings, which is normally 3:30, but today, for some reason, it was not. I know 3:30 appeared on the order paper, though. Mr Sterling is quite correct.

Mr Sterling: I was 15 minutes late; sorry. I was trying to arrange, Claudio, so this House would run smoothly for a change. I was trying to instruct your whip how to change the rules. I thought this was more important.

Mr Polsinelli: I appreciate that there was at least one good excuse for you not to be here on time.

The Chairman: Could we get back to the matter at hand?

Mr Polsinelli: The other item that I would like to present for the committee's consideration is that we were given this afternoon, I would say about an hour and a half ago, a copy of a report from Management Board

responding to the questions that we raised when it had its presentation to us. The information was also provided to us by our researcher respecting those items that we asked her to prepare.

Unlike some of the members of this committee, I do not read quite as quickly, and I do not think I have had the ability to digest these 30 or 40 pages in the past hour and a half, considering that we were sitting during a quite interesting question period.

So I would propose one of two things for this afternoon in terms of our deliberations: The first, which is my preferred suggestion, would be for Management Board and legislative counsel to take us through their reports, after which we will decide either to proceed with drafting our recommendations or to adjourn; the second, which is not my preferred option, but one that I am throwing on the floor for the committee to consider, is that we adjourn today's proceedings until such time as we have had an opportunity to digest these reports that were given to us today.

I am sure that could be arranged for tomorrow or next week. Tomorrow will probably be fine.

The Chairman: There are two prongs to your motion, if that is a motion.

Mr Polsinelli: It is not a motion, I think. I think what we should do, if we could, is proceed by consensus. As I said, my preferred recommendation would be for those individuals who prepared the reports for us today to take us through them page by page, recommendation by recommendation. That would be my preferred option.

However, if the committee is not prepared to entertain that, and I would hope that we could proceed in a consensus fashion, then I would ask that we adjourn consideration of the Henderson Report of the Ontario Provincial Courts Committee until tomorrow afternoon, giving us the one evening to read the information that was provided to us.

Mr Chiarelli: Obviously it is up to the committee to determine that type of issue, but I think it might be relevant, in view of the fact that the material was just made available a short while ago, that we canvass Mr French's feelings on this issue, because he obviously has to react and advocate the cause of the Henderson report. It may be that he will require some time to study the reports before us.

I wonder if he might have a comment on that, or whether he would prefer to have an adjournment until tomorrow so that he can maybe better prepare himself to respond to these reports.

The Chairman: Would you like to come forward, Mr French, and maybe tell us. That seems like it would be eminently fair.

1550

Mr French: I just received this material five minutes ago and I have read through it. I am assuming that some further material has been prepared by Ms Swift, and I have not had an opportunity to look at that yet or consider what may be there. So I am not able to respond to this material this afternoon, and I doubt that I would be able to respond to it tomorrow.

With respect to Mr Chiarelli's inquiry, I appreciate the courtesy he has extended to me in seeking my views with respect to this material, and I appreciate the courtesy in allowing me to speak with respect to it.

My view remains the same, however, that this procedure leaves something to be desired. I do not see how this committee, with all its collective wisdom and ability, can attempt to rehear and judge the Henderson report recommendation by recommendation, particularly having regard to the fact that it heard from in excess of 50 witnesses, throughout five centres across the province, and very extensive submissions from the government and from the judges. Having received the wealth of that information, the Henderson committee then deliberated on it for a period in excess of two months, with the assistance of a research officer and a writer, in order to prepare the report.

The members present in the committee have had the benefit of hearing from me and one or two other people and they have also had the benefit of some selective positions that are put forward by Management Board, which I take exception to, particularly when they get into the realm of costing and when they get into the realm of the assumptions that lead to their costing positions.

So on behalf of the judges, I take the position that this exercise is somewhat abortive. While I could consider the material in greater detail, if you are asking me what my eventual response would be, I would indicate that in all probability it would be one where I would simply disagree with the assumptions that have been put forward by Management Board and indicate to you that if an alternative set of assumptions is selected, then the costing implications are dramatically different. That was the position Mr Brown was able to speak on, had anyone been interested, but none of the members present chose to ask Mr Brown any questions with respect to those costing implications.

That is my comment. I hope I have been responsive to your question.

Mr Chiarelli: I am not sure. Are you saying it does not matter whether we defer it or not because it is not going to make any difference to your advocacy?

Mr French: I think it makes a great deal of difference to the judges if you defer it. I say that for two reasons:

First of all, the judges are very concerned with the efficacy of the procedure that has been involved in the last year. They entered into an agreement with cabinet more than two years ago wherein cabinet undertook to act in a certain manner in order to resolve financial differences affecting the judges. The procedure has simply taken too long.

The speculation in the press—and unfortunately, that is the level of intelligence or the area of intelligence that I have to draw on—is that the House may rise some time within the next month. If that were to happen, the danger exists that the resolution of this issue would go over for some extended period of time.

You appreciate that within six months from now, the next triennial commission is to come into being. The effect of further delay with respect to this report is in effect to junk it. With all due respect, I think it would be disgraceful to allow that to happen. This is a report that is excellent in its quality, its research and its penmanship, and I think it would be a sad state

of affairs to allow it to be scrapped because a new commission overtakes its work within six months' time. If you adjourn, my concern is that you may lose the opportunity to decide upon this report and you may postpone your decision with respect to it for too long. That is my concern.

Mr Kormos: We did get this fairly recently, and I have to tell you, my humility prevents me from claiming any special skills, but not only was I able to read this and digest it, but I was able to digest a hotdog from one of those vendors down on University. This was in one hand and the hotdog was in the other.

The Chairman: I do not see any mustard on the report.

Mr Kormos: No, I was very careful. There is something here, but I think it is cigarette ash.

The Chairman: You may have started a new trend.

Mr Kormos: The thought of having somebody read these things to us is really unpleasant. Maybe if we just had 30 minutes of quiet time or something, people could read this. Those who did not want to read it could have a little nap. Then we could get on with what we are doing. Surely, 30 minutes is enough time to take a look at this. I think that would be a compromise and something upon which there could be a consensus, if people really do have problems with having received that only recently.

Mr Sterling: Mr Chairman, maybe I should arrive a half-hour later the next time I come so that Mr Polsinelli would have had a chance to read this over before I got here. While this great discussion with procedure has gone on, I think I have probably read enough to proceed. I do not know what the whole thing is going to come to. I think the question now, because it is so late in the process, is whether we are trashing the whole idea of the agreement between the provincial court judges and our Attorney General (Mr Scott). I think there is a great deal more concern about the procedure than there is about the specific recommendations at this time. So let's get on with it.

The Chairman: I wonder if there is not some merit in what Mr Kormos said about taking 30 minutes of quiet time to read the reports and then come back here to deal with them. I appreciate what you are saying, Mr Sterling, that you have read it, but—

Mr Sterling: Most of it is done on a point-by-point basis, an issue-by-issue basis.

The Chairman: All right. Mr Kormos has suggested half an hour. I do not know how that fits in with Mr French's schedule or with the people here from Management Board, but if that is agreeable then we could adjourn until 4:30 and let you have your quiet time. We may have to adjourn until 4:45.

Mr Polsinelli: It is my feeling that 30 minutes to try to digest these 30 or 40 pages is probably just as good as proceeding with the report. If the committee has decided to deal with this today, then let's just deal with it, and I will pretend that I do not have this information before me. Setting aside 30 minutes when there is no quiet place in this building that I can go to is just ridiculous. I would suggest that we just deal with it, if that is the committee's wish.

The Chairman: Do you not have an office?

Mr Polsinelli: Yes, at College and Bay.

The Chairman: All right. You are welcome to use my office. It is in the building.

Mr McGuinty: I think it would be an unfortunate precedent if we limited our discussion to matters we understood.

The Chairman: What do you want to do? I am easy. I think, though, there is some merit in at least getting a quick run through this stuff. We can either run through it here, if you want—

Mr Polsinelli: Could I make one other suggestion? I understand that the subcommittee has set aside today and tomorrow to deal with this report. Is that not the case?

The Chairman: Two days. It was actually the committee that did that

Mr Polsinelli: It was the committee that decided on today and tomorrow?

The Chairman: Yes.

Mr Polsinelli: If it is the committee's view that we could complete this report in one afternoon sitting, then perhaps the more appropriate thing to do would be to adjourn the proceedings now and resume tomorrow afternoon. If that is not the committee's—

The Chairman: I think Mr French—

Mr Polsinelli: Mr French, with the greatest of respect, is not a member of this committee.

The Chairman: I noticed that before you drew it to my attention.

1600

Mr Polsinelli: Mr French is welcome to join us and share his thoughts with us at our invitation, but I think members of the committee have to feel satisfied that they understand the information we have before us.

If it is the committee's view that they could complete drafting of our report on Henderson in one sitting, then perhaps we could do it tomorrow afternoon.

The Chairman: I am looking for some direction from the committee. What do you want to do? We have about six ideas floating around here.

Let me canvass it first. Does anyone want time to review the report? No one wants time.

Mr Polsinelli: Time, in what sense? In 30 minutes?

The Chairman: Time in terms of either adjourning for 30 minutes or one hour.

Mr Kormos: Mr Chairman, I am sorry. Perhaps I spoke in somewhat of a light-hearted vein but I was serious about the prospect of simply adjourning it for a few minutes to enable people to review it.

At the same time, people are saying, "No, that is too cramped." Again, College and Bay, holy cow. I knew Mr Haggerty had to walk all the way from Yonge and Wellesley. I thought he was being punished for something. I wonder what Mr Polsinelli did wrong?

Mr Chiarelli: Trouble is it takes Claudio an hour to read one page.

Mr Polsinelli: I have the unfortunate weakness that I can read only one word at a time.

The Chairman: That is why you got into politics, is it?

Mr Kormos: I am confident that is not the case.

It remains that I would be loath to see people tomorrow, for instance, or at any point, saying the reason they are making their decision the way they are making it is because they have not had an opportunity to fully review all of the material that is before the committee. That would be an unfortunate thing.

As I say, although I suggested 30 minutes by way of suggestion, if people are comfortable with that it might have been a good idea. Maybe people are not comfortable with it. I think it is far more important that people not be able to say that they have been handicapped by virtue of not being able to digest the material presented today.

The Chairman: Do you want to get on with it right now?

Mr McGuinty: Mr Polsinelli wants to amend the half hour to two hours.

The Chairman: Not seeing anyone moving a motion to the contrary, I think the consensus is that we will proceed with it now and, I suppose to make any rational sense out of that, what we should start doing is from the top to the bottom of the report, and then instructing legislative counsel, on those issues that we agree on, to incorporate that into a report.

Mr Polsinelli: Can I suggest that perhaps what we should do is see it in the form of a motion and have people put their hands up?

I would move, Mr Chairman, that we adjourn consideration of the report of the Ontario Provincial Courts Committee until tomorrow afternoon, the regular sitting of this committee, and that we complete our deliberations and draft our report by the completion of tomorrow's sitting. That would be my motion.

The Chairman: Would you like to put in there a time that we would start tomorrow so that there is no wrangling one way or the other?

Mr Polsinelli: After routine proceedings.

The Chairman: There is a motion by Mr Polsinelli. Does anybody wish to speak to that? Seeing nobody wishing to speak to it, those in favour of Mr Polsinelli's motion? Those opposed? Those not voting?

Mr Offer: I am still thinking.

The Chairman: We will give you a few minutes there, Mr Offer.

I have to do it again. Those in favour?

Mr Polsinelli: May I explain the motion? That we adjourn consideration of the report until tomorrow's sitting and that we complete our report on the report of the Ontario Provincial Courts Committee by tomorrow's sitting.

That is, we deal with it tomorrow and be complete by tomorrow at six o'clock. I think that is not an impossible task because if we look at the recommendations that are contained in the Henderson report there are probably only a handful which are contentious and may want to be discussed by the committee.

The Chairman: We were in a middle of a vote and the only reason that I allowed you to repeat it was that there were some members who did not quite understand which way they were voting.

Those in favour of Mr Polsinelli's motion?

Those opposed?

Motion agreed to.

The Chairman: I want to make it perfectly clear that Susan does not operate here with a desktop computer so what you are saying is that the report, as we see it, would be given to Susan and she would prepare it for what would have to be our instruction and what would have to be a rerun through it on another date.

Mr Polsinelli: Unquestionably.

The Chairman: If we give Susan direction tomorrow, she is not going to have the report for us tomorrow.

Mr Polsinelli: We will give her sufficient direction for her to draft a report, and then obviously that draft report would have to come back before the committee in terms of finalizing.

Interjection.

The Chairman: We will talk about that.

I would hope that everybody would have read the material. This is not a criticism, it is just an observation. We could all start not later than 1530. We have a lot of work to do between then and 1800.

Mr Sterling: I am able to deal with it in five minutes.

The Chairman: You now have before you a copy of a draft of the budget. Any questions on the draft budget?

Mr Polsinelli: Let's look at it.

The Chairman: No. You can review it and we will vote on it tomorrow.

Mr Sterling: Why is the chairman such a piker on this committee?

The Chairman: Piker? I am overworked and underpaid, that is why.

Mr Polsinelli: Or the reverse,

The Chairman: That is true. Of course, they did not require terribly high qualifications for this job. Anything more?

I apologize to Mr French and to the other people in attendance for having consumed an hour or more of your time.

We stand adjourned until tomorrow after routine proceedings or no later than 1530, please.

The committee adjourned at 1607.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
ORGANIZATION

TUESDAY 27 JUNE 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Clerk: Arnott, Douglas

Clerk pro tem: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 27 June 1989

The committee met at 1535 in room 228.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
(continued)

The Chairman: I recognize the presence of a quorum. Are Mr Offer and Mr Kanter here?

Mr Sterling: Before Mr Kanter and Mr Offer get here, I would just like to comment that I am glad Mr Polsinelli has showed up, 40 minutes after question period today. I thought it appropriate that I—

Mr Polsinelli: Mr Sterling, you will note that I was in attendance in the corridor and was waiting for the opposition parties.

Mr Sterling: And I said was waiting patiently to start the committee.

The Chairman: He has been in attendance, according to my observation, at least since I have been here, which was 25 after three. Mr Kormos had other things to do and he has arrived as close to 3:30 as possible.

Mr Sterling: Oh, do we start at 3:30?

The Chairman: Well, I had said after routine proceedings or no later than 3:30.

Mr Sterling: I see.

Mr Kormos: Excuse me, Mr Chairman. I had explained to you, sir, that my watch is fogged.

The Chairman: I realize that. I was not going to add that, because I was concerned about —

Mr Mahoney: Only your watch?

Mr Kormos: Just my watch. It is not grease, just fog.

The Chairman: I wonder if we could get down to the business of the day. We have a rather large task to perform and very little time to do it. I wonder if I have any suggestions from the committee. If I do not, I am going to make my own suggestions.

Mr Kormos: I presume the material of the greatest interest is the comparison between federally appointed judges and provincially appointed judges. Is this committee, contrary to what Henderson did, going to rely upon the status of federally appointed judges in terms of their pay and benefits, or is it going to concur with Henderson that that is not of great significance? The whole matter seems rather brief: If it is of no significance, it would be disregarded and one wonders why it was ordered.

The Chairman: Well—

Mr Kormos: One moment. If it is of significance, then just going down the list, it seems that in each and every category federally appointed judges do so much better than provincially appointed judges will do, even with the Henderson recommendations, that it would seem to make short shrift of the matter. It would seem to indicate that the Henderson recommendations are reasonable and well within any appropriate range that might be considered.

The Chairman: Could I come back to the way I perceive it? The information that was provided to us by legislative counsel was really, at our request, to compare provincial court judges with federal court judges, but it was not necessarily definitive of what we would do. If you turn to page 4 of the legislative research that was given to us—it has June 1989 on front—if we look under Summary of the Position of the Management Board of Cabinet, it has taken "the position that their role before the justice committee was not to make recommendations as to how the committee might or might not implement the Henderson report." They were to "provide background information on the cost implications of the recommendations," which they have done, you will see.

In addition to that, they indicated: "One of the governing principles adopted by the Henderson committee was the 'total compensation principle,' meaning that the package of recommendations must be both financially credible"—and Henderson says that, according to this information—"and make sense as a whole. Management Board suggested that it was up to the justice committee to decide what it means to implement a package of recommendations that is financially credible."

That is the nub of the issue, I suggest, that we have to consider.

"It was further suggested that in view of the Henderson committee's decision to make the recommendations without a full cost analysis, the justice committee must itself decide whether it is financially credible to implement the report or parts of it without understanding the cost implications on the grounds that it is a small percentage of budget or that Canadians in general think we should be willing to maintain its quality." That was the reason, as I understand it, that we asked for financial implications, because we needed that in order to make that determination.

1540

If you go to page 5, it deals with the question of salary and indexation. The second issue we perhaps have to consider in the framework of this report is that it is alleged by Management Board that, "Automatic indexation would feed the wage spiral and create built-in inflation." It is submitted to the committee that, "Unless the committee was satisfied that the salaries of judges are somehow immune to precedent-setting potential because of the independence of the judiciary, the automatic indexation would set a precedent," so we have to decide whether that issue is valid. I think we have probably all agreed upon that on an earlier occasion, that the independence of the judiciary is an absolute necessity.

Reverting back to the material prepared for us by research, where we take most of the recommendations from the Henderson report and compare them to the federally appointed judges, I am first going to ask the members of the committee whether there are any items in there that members wish to speak on, and if so which ones, just to get things rolling—Yes, Mr Polsinelli?

Mr Polsinelli: I was going to give you the one I wanted to speak on.

The Chairman: All right. Which one?

Mr Polsinelli: Recommendation 29.

The Chairman: Are there any other members who wish to address any of the recommendations in the report?

Mr Kanter: Excuse me, Claudio, are you talking about recommendation 29 in the Henderson report?

Mr Polsinelli: Yes.

The Chairman: Do any other members wish to speak to any of the other recommendations that are in the material provided by research?

Mr Offer: I just want to be clear. Mr Polsinelli has indicated that he wanted to speak on recommendation 29 in the Henderson report, and you are alluding to some other research paper provided by Ms Swift. There are certainly some recommendations in the Henderson report that I, too, would like to speak on. Is that what you are asking for?

The Chairman: If you read the covering letter from Susan, all the recommendations in the Henderson report, other than some, such as the definition of "spouse," are reflected in the 23 June 1989 memo to us.

Interjection.

The Chairman: It is not in there? I understand as well, Mr Polsinelli, that 29 is not in that summary either. What I would like to do is get this thing moving by finding out who wants to speak to what.

Mr Polsinelli: Perhaps you can explain again what you would like us to do. Are we addressing the report prepared by legislative counsel or are we addressing the recommendations in the Henderson report?

The Chairman: In light of the fact that 29 is not in the research, then we would be addressing the report itself. I just want to find out what sections of the report members want to address.

Mr Offer: I would like to address recommendations 3, 4, 5, 6, 7 and 8, not necessarily in that order.

The Chairman: Fine. Do any other members wish to address any of the other recommendations in the Henderson report?

Mr Polsinelli: In terms of procedure, once we have addressed these recommendations that committee members wish to address, are we endorsing the balance of them? Are we accepting them? Are we forwarding them to Management Board for its consideration? What are we doing with the balance of them?

The Chairman: As I read it, we are deciding that it is financially credible to implement those parts of the report; that would be part of our recommendation in our report. That is the submission of Management Board, but I will leave that up to you people.

Mr Polsinelli: In other words, we can say of those recommendations which we are not addressing that as a committee we can find no objection to them and we forward them to Management Board for its consideration?

The Chairman: That is right.

Mr Polsinelli: And that the committee will only comment specifically on those that we upheld. Would that be a fair assessment?

The Chairman: Let's see if everybody is on the same wavelength. Is that agreed?

Mr Kormos: I am hard pressed to disagree with it, because I am not interested in dealing with it that way, so how can I disagree with it? I think that is a dumb way to deal with it and not what we should be doing.

The Chairman: How did you want to deal with it?

Mr Kormos: As you well know, and we had already expressed our position on this one very clearly, our view, along with others, was that the Henderson report should be dealt with in its entirety, as a whole.

Mr Polsinelli: We have already made that decision. You can talk about it again, but it has already been decided.

Mr Kormos: Do not interrupt. I am briefer when I am not interrupted. As I am saying, I am not disagreeing with it because of the position I originally took and which I maintain, so I cannot disagree with it.

The Chairman: Mr Kormos, you had to go outside. When you were coming back in, what the committee had agreed was that we will deal with recommendations 29, 3, 4, 5, 6, 7 and 8 of the report and any others you want to deal with. Having done that, we are by inference saying we are recommending all other sections of the report, so there is no need to go through the report clause by clause.

Mr Kormos: I understand. That is why I said what I said.

The Chairman: Mr Polsinelli, you raised recommendation 29, if you would like to speak to it.

Mr Polsinelli: Perhaps we can take them in order.

The Chairman: I was just taking them in the order of the people who raised them.

Mr Sterling: I would just like to support Mr Kormos's comments. I think we are wasting our time in here. We should deal with the whole thing as one unit and pass it on to cabinet, where they are going to make the decisions anyway.

Mr Polsinelli: Are you moving that the committee reopen its decision to consider the report in the fashion it has already decided to consider it?

Mr Sterling: If you would like to do that, I would be quite willing to accept that.

Mr Polsinelli: My understanding, Mr Sterling and Mr Kormos, is that the committee has made a decision as to how to deal with the report. You can either accept that decision of the committee as made and participate in the process or you can say again that you are not in favour of the process, but I think we should be productive and just carry on and get it over with.

The Chairman: We have a lot of work, so let's try to get to the meat of it. Do you want to deal with them numerically?

Mr Kanter: Yes.

The Chairman: We will deal with 3 first. Do you all have this? It was provided by Mr French. If you have that material with you it might be of assistance. It is a summary of recommendations. Does everybody have that?

Mr Offer was the person who asked to discuss recommendation 3.

Mr Offer: I apologize, first, because I do not want to just deal with 3; surely there is an interrelationship between 3 and 4, between 5 and 6, and I think there is an interrelationship between 7 and 8.

First, in terms of 5 and 6, I think what it is talking about is this whole question of salary indexation. That is something new, and I guess we are going to have to determine whether we think there ought to be some salary indexation and how it ought to be indexed. Should there or should there not be, for instance, a cap put upon such indexation? Keeping in mind the whole question of the independence of the judiciary, which we have heard some submission upon, I think we have an opportunity here of moving towards salary indexation.

1550

In terms of recommendations 5 and 6, though I do not speak to them specifically, I do indicate in general terms that the issue of salary indexation is one which we should endorse, possibly indexed to the consumer price index with maybe a seven per cent cap. This is a personal feeling on my part.

Keeping in mind the whole process of what Henderson was about, it was a process of, first, some very extensive consultation and, second, in-depth consultation in terms of the numbers, actuarial evidence and the like. The report in itself came to grips with some very difficult issues and I think came to grips with those issues in a fairly exhaustive and forthright way.

I guess the question we are going to have to address, in terms of the process, is whether we particularly support the type of Henderson-like examination that went on, and the referral of the report to this committee and the type of work we are able to do in terms of the recommendations made. I personally feel that there is opportunity for reports such as the Henderson matter maybe not on a yearly basis, but maybe every three, four or five years; that type of in-depth examination of ongoing issues.

Having said that, what is the bridge from the determination of issues one year to the determination of issues four or five years down the line? I think salary indexation is a way to bridge that. It is a way that I hope the judiciary will agree with. It provides a sense of some sort of confidence in the system itself, in terms of the report and how the Legislature will deal with the matters. Therefore, in terms of recommendations 5 and 6 I would like to see this committee recommend salary indexation. I would like to see that recommendation go to Management Board, if that is where it goes from this committee, possibly with some caveats that there be a cap of some sort to provide some certainty in the financial aspect, but that the judiciary know that each year there would be a salary indexation, bridging the gap from one report to the next.

Those are my comments on recommendations 5 and 6. I do not know if you want me to go to recommendations 3 and 4. They are much briefer--

The Chairman: You may as well.

I want to get agreement, Mr Sterling, just before you go out, that because we have agreed we want to get this all done before the magic hour of six, maybe we could agree on allocations of time here and leave it up to me to be fair in terms of who gets how much time.

Mr Sterling: Sure. Leave it up to you.

The Chairman: All right. Mr Polsinelli, do you want to speak to the matter of those three items?

Mr Polsinelli: I want to speak to recommendations 5 and 6, yes. I want to endorse and accept what my colleague the parliamentary assistant to the Attorney General has said.

In terms of recommendations 5 and 6, I would add one further recommendation if the committee desires, in that the method of indexation for the provincial court judges' salaries be one that is comparable to the method of indexation for district court judges' salaries. I notice that the recommendation Henderson has for indexing the salaries is different from that employed for district court judges' salaries.

The Chairman: You are changing what Mr--

Mr Polsinelli: No. I am accepting what Mr Offer has said in indicating that the committee supports that a method of indexation be adopted in terms of provincial court judges' salaries. I am adding to that that I feel it should be a method comparable to a method presently used in terms of indexing the district court judges' salaries.

The Chairman: All right. Is what you had said, Mr Offer? Let me read it in here.

Mr Offer: The way I understand it is that Mr Polsinelli agrees with the principle of indexation. He is just providing further considerations for Management Board in terms of how it is going to bring about that principle. I do not see anything the matter with the committee's endorsing the principle of salary indexation with a couple of considerations to Management Board when it takes a look at that principle. That is how I understood Mr Polsinelli's comment.

The Chairman: Just to get that in clear perspective then, the committee thus far, through the first two speakers, has indicated that it favours indexation and that it recommends that the indexation should be similar to that of a federal court judge, which is "adjusted annually by an amount equal to the increase in the industrial aggregate or seven per cent, whichever is less." Is that right? Is that clear?

Mr Polsinelli: I do not think we have to stipulate what the method of indexation is, not the federal court judges', the district court judges'.

The Chairman: They get the same thing.

Mr Polsinelli: Actually, that sort of falls into an area that I

think our report should indicate, that in implementing the recommendations of Henderson, Management Board should take into consideration the salary and benefits received by the district court judges and that in fact the overriding principle should be in implementing the recommendations to bring provincial court judges' salaries and benefits as close as possible, perhaps through a phase-in process or whatever process it wants, to that of the district court judges. If we are recommending, for example, a method of indexation for provincial court judges' salaries, I would think that perhaps the way it would want to index their salaries is something similar to what is already being done in terms of the district court judges.

Carrying on with that little speech, the whole rationale for that would be the Attorney General's (Mr Scott) announcement a number of months ago, where he indicated that it was his intention to attempt to unify the three courts in Ontario: the provincial court, district court and Supreme Court. But if you are going to unify the three courts in the province, where all judges in those courts are going to be equal in one form or another and receiving the same compensation packages, I think it makes eminent sense that the salaries and benefits of the provincial court judges, who are at present appointed and paid by the province, gradually move towards the salaries and benefits that are at present being paid to the district court judges.

That would be my underlying rationale in all of these recommendations, to indicate to Management Board that in implementing Henderson or whichever recommendations in Henderson it wishes to implement, that that be its overriding principle.

The Chairman: I was trying to get some semblance of clarity for the person who is going to draft this report for us.

Mr Polsinelli: I think Susan should nod or—

The Chairman: I mean, it needs a little clearer direction.

Mr McGuinty: In passing, Mr Offer referred to the idea of capping the increase in accordance with the cost of living. Mr Polsinelli, I think, by implication would follow the pattern here of seven per cent. I could never understand that. After all, the spirit and purpose of indexation are to ensure that incumbents are not penalized with a drop in income, which is certainly not warranted by virtue of their performance. They are not penalized by a drop in income, due to circumstances beyond their control completely, which is the cost of living. That clearly is the spirit and purpose of indexation. I never could understand the logic of putting a cap on that. I really do not know and I think this—

The Chairman: There is a cap on the federal court judges'—

Mr McGuinty: I know that. You can point to lots of things. You can also say a lot of people do not even have their salaries indexed. I think somebody in his lack of wisdom placed the seven per cent cap on the district court judges, and I am not sure why we should feel bound or even influenced by that precedent, given the spirit of indexation. If the cost of living goes up to nine per cent, why should the judges be penalized? So I would have a caveat against that business of putting on the cap.

1600

Mr Sterling: Is anybody opposed to recommendations 5 and 6 of the Henderson report?

Mr Kanter: No.

Mr Sterling: Okay, I move that we accept those recommendations.

Mr Polsinelli: Well, Norm, I do not know if you missed part of the discussion. I accepted the recommendations. All I added to them, in terms of implementing an indexing policy for provincial court judges' salaries, was that rather than relying exclusively on what Henderson has recommended, they move in the direction of how district court judges' salaries are now indexed, somehow trying to get the two packages of salary and benefits as close together as possible eventually.

The Chairman: Does anybody have a problem with that?

Mr Polsinelli: I do not know if you have a problem with that.

Mr Sterling: I do not know how you do that without--

Mr Polsinelli: It is very simple. Henderson recommended that provincial court judges' salaries increase "in the national average of the consumer price index, published by Statistics Canada," using the Ontario figures. District court judges' salaries, according to our legislative research, are implemented by using the industrial aggregate or seven per cent, whichever is less. I am saying that rather than using the consumer price index, let's use the industrial aggregate or seven per cent, because that is a system that is already in place, for the district court judges.

Mr Sterling: I guess the argument back is that these people are being paid \$20,000, \$15,000, \$30,000 less than the district court judges.

Mr Polsinelli: The rationale for my argument was not to give the provincial court judges a lesser benefit.

The Chairman: Just a second, Mr Polsinelli. Unless you know, and research does not know, by going to the federal court indexation, are we giving them more or less?

Mr Polsinelli: District court.

The Chairman: Well, district court.

Mr Polsinelli: I am saying it does not matter.

The Chairman: I think we should find that out, because by taking something out of Henderson we may be actually penalizing. Can anybody tell us?

Mr Polsinelli: Can I make my argument again for the benefit of Mr Sterling? My argument was a fairly simple one.

Mr Sterling: I know what your argument is.

Mr Polsinelli: It was a fairly simple argument. I am not even looking at whether one is greater or lesser than the other.

The Attorney General said a number of months ago that he wants to unify the courts in the province. I suggest that Management Board, in implementing Henderson or any recommendations dealing with provincial court judges' salaries and benefits, move towards the salaries and benefits that are

presently being paid to district court judges. If we are going to implement the indexation, let's use one that is already there so that eventually, four or five years down the line, there are a lot of things that are comparable, and rather than having to make drastic changes and adjustments, things are already in place to make the changeover easier.

Mr Sterling: I just do not think we should tinker with the small details.

Mr Polsinelli: It is not a small detail.

Mr Sterling: That may happen five or 10 years from now; these courts may be merged. I do not know if it is going to happen in a year. If we pass Bill 2 and Bill 3 in this Legislature, you would still have to pass federal legislation as well. That may or may not happen. Phase 2 of this grand scheme may not happen in your lifetime or my lifetime. Why do we not just deal with them as they are? I do not think the cap of seven per cent is a major point in what Henderson is doing or what he is not doing. We generally agree with recommendations 5 and 6. Let's go on to something else.

Mr Kanter: Mr Chairman, further to your comments, we have the Henderson report before us which recommends that we support indexation. They come up with a particular view. Management Board did express some concerns, some doubts, some precedential concerns or whatever.

I think we should set a general policy course here and I guess I end up agreeing with Mr Sterling and his stated views that we should basically endorse the Henderson recommendations. Personally, I have no idea whether the consumer price index is better or worse than the industrial aggregate.

The Chairman: I am asking legislative research to find that out.

Mr Kanter: If I may suggest, I am not sure that I see it as the role of our committee to pick and choose between those complicated financial results. I presume those things probably depend on the rate of inflation in given years, and one is probably a little ahead in one year and not in the other.

Basically, at the end of the day, I think the role of this committee should be to set some general policy directions. I think what we have said, on balance, is that we prefer the Henderson report approach, which says, "Yes, index their pensions on an annual basis."

I think the reason we are saying that—at least, the reason I would support it—is twofold. First, it is better, fairer, more just for the judges. They do not have any other mechanism of setting annual increases. They do not have collective bargaining or anything like that.

There is a second reason, and the second reason concerns the role of this committee. In my view, this has been a rather difficult, some would even say tortuous, process to have a committee of the Legislature conducting labour relations or whatever. I think it is very important as a principle that we adopt it; however, personally I do not feel competent to get bound up in the details of whether it should be industrial aggregate or consumer price index, and maybe there are some other standards and measurements as well.

I would be quite happy to adopt recommendations 5 and 6 of the Henderson report. Should there be some cap imposed, this would not cause me any

difficulty, quite frankly. I do not think it would have any major effect if it were set at seven per cent or something like that. I think the most important thing we can do, and all we should do in this case, is to set a general direction. I think we should endorse the general principle of indexation, and that is well covered in recommendations 5 and 6 of the Henderson report. I would move that we adopt them.

The Chairman: We have a motion by Mr Sterling that recommendations 5 and 6 of the Henderson report be adopted. Are there any further speakers to that issue?

Mr Offer: Very briefly, I think all the comments so far concerning recommendations 5 and 6 and the issue of salary indexation have been in favour. Having said that, I think it behooves us to vote in favour of recommendations 5 and 6.

The Chairman: Those in favour of the motion moved by Mr. Sterling that we adopt recommendations 5 and 6 of the Henderson report? Carried unanimously

You addressed recommendations 3 and 4, Mr Offer. Recommendations 7 and 8 have not yet been addressed. Do you have anything further to say on those?

Mr Offer: In terms of 3 and 4, we have the recommendation of the judges' salaries effective 1 April 1987 in recommendation 3 and the recommendation dealing with chief judge, associate chief judge and senior judge in recommendation 4. We also have an announcement by the Management Board of Cabinet of 5 May which deals with those salaries effective 1 April 1989. I suggest that we endorse the salaries as per the announcement of Management Board.

Mr Sterling: I object. I think we should endorse what recommendations 3 and 4 say. It is not far off what the government has said. I think our committee can be at least that independent from what the government has said. If the government chooses to kick in \$105,000 as of 1 April 1989, so be it. We are not talking huge amounts of dollars, but we are talking some dollars. Again, relatively speaking, it is a minor adjustment and I do not think the committee can really make that determination. In fact, we might even want to consider more, presented with Mr Polsinelli's argument.

I would oppose that motion put forward by Mr Offer.

1610

Mr Kormos: Mr Kanter's comments about recommendations 5 and 6 would appear equally relevant—

The Chairman: Just a second. Has there been a motion moved to adopt 3 and 4? Nothing?

Mr Sterling: No.

The Chairman: Thus far. All right. Go ahead. There is a motion now by Mr Sterling that they be adopted.

Mr Kormos: Mr Kanter's comments about recommendations 5 and 6 seem to be equally applicable to 3 and 4. What the government did or did not do on 5 May really has to be seen as merely an interim measure or else it would have short-circuited or terminated this process now.

Obviously, the government wanted to carry on with the consideration of the Henderson report and, similarly, wanted to have it referred to Management Board after its consideration. So what they did on 5 May is really of no great relevance. Far more important is what Mr Kanter said about recommendations 5 and 6, in that if one agrees with them in principle, then they should be adopted. It is not the job of this committee to tinker around and move it to the left or the right by small amounts.

The other important consideration would be that to not support the motion by Mr Sterling—Mr Kanter talks about a long, tortuous process. I am told that it has been a long, tortuous process for the judges, and to not support Mr Sterling's motion would be to say that that long, tortuous process was all for naught.

It would also really reinforce any credibility loss that has been generated to date. As I understand, the process or the negotiations and series of commitments is that it was based to a large extent on the concept of retroactivity; that is to say that 1 April 1987 was the effective date, which is of course what recommendations 3 and 4 are all about.

Any reliance on the 5 May 1989 announcement is of little significance because that was so clearly an interim measure. If it were not, then this would have been all for naught and it would have been all for naught on the part of the judges. The government let the judges proceed, with the judges clearly under the impression that 1 April 1987 was going to be the effective date. I think that is important and that is why we have no choice but to support the motion of Mr Sterling.

Mr Polsinelli: I have got problems with this motion. I have got problems not necessarily because I do not feel that provincial court judges should be paid a lot more than they are being paid; I have got problems because of some of the discussions that have been going on in this committee.

If we do not want to move the figures back and forth and if we are going to deal with this in general principles, then what I think we should be doing with recommendations 3 and 4 is basically saying we make no comment on it. When we say back, what we say to the House and what we say to Management Board should be: "You guys have made your decision in terms of their salaries. Therefore, we're not going to comment on it." That is the response that I would be prepared to endorse.

I honestly cannot say whether provincial court judges should be making \$105,000 as of 1 April 1987 or whether they should be making \$105,000 as of 1 April 1989 or whether they should be making \$120,000. Henderson has made a recommendation. Management Board has decided, be it as an interim measure or in actual fact, what the salaries are going to be. That decision having been made, I think it is taken out of our hands. We are just wasting our time recommending one way or the other.

The Chairman: I know I am supposed to keep quiet, but I think the reason Henderson recommended that was because of paragraph 7 of the memorandum between Mr French and the Attorney General.

Mr Polsinelli: As I read that, it was a bit ambiguous as to whether it should mean 1 April 1987 or something else.

The Chairman: It says, "Following receipt of a report of the committee and its tabling and consideration by the standing committee on the

administration of justice, the government would table legislation establishing the salaries of provincial court judges as of April 1, 1987." That is why I think Henderson—

Mr Kormos: It is pretty ambiguous. It needs to have an exclamation mark after it on the transcript so that it shows the sarcasm.

The Chairman: Oh, I did not realize that.

Mr Mahoney: That is not Management Board's position.

Mr Polsinelli: My comments were fairly simple. It is my opinion that, first of all, section 7 of that memorandum of understanding is a bit ambiguous. When I read it the first time I thought there were at least two interpretations available of it. But in any event, no matter how you interpret it, my position with respect to recommendations 3 and 4 is a fairly simple one. The government—Management Board—has made its decision and we do not necessarily have to endorse or reject that decision. I think what the committee should be doing is just saying we have no comment on it, simply because a decision has been made and it has been taken out of our hands.

The Chairman: You cannot amend Mr Sterling's motion because that would make—

Mr Polsinelli: I am not amending; I am giving you indication that I am going to be voting against Mr Sterling's motion. If Mr Sterling's motion were to lose, then I would be prepared to move that the committee make no comment with respect to recommendations 3 and 4.

The Chairman: Mr Offer, is it on Mr Sterling's motion or is it in relation to the motion that Mr Polsinelli says he will move if Mr Sterling's motion does not carry?

Mr Offer: Absolutely.

The Chairman: What does that mean? That is ambiguous.

Mr Mahoney: Make your own interpretation.

Mr Offer: I guess my question is to the chair, and I put this as a hypothetical. If, for instance, Mr Sterling's motion with respect to endorsing 3 and 4 were defeated and Mr Polsinelli made a motion in terms of saying that there is no comment on salary, then what form does it take in the report? It seems that if we vote against 3 and 4, it means that 3 and 4 are sort of out of our report, we have voted that out. Then we have somebody making a motion commenting upon something we have voted down. It seems to me I am missing a middle piece.

The Chairman: You are not asking me for direction, but I would suggest it probably would appear in the report just the way the motion was passed.

Ms Swift: The only way I can think that it would appear would be that the committee, as I understand it, has accepted or recommends 5 and 6. Everything else has been endorsed. On 3 and 4, I guess perhaps we could say something like, "Unless the committee makes no comment"—

Mr Kanter: I think he also said—

Ms Swift: No position with respect to the Henderson report.

Interjections.

The Chairman: I think we should get on with Mr Sterling's motion and see what happens. Does anybody have any further comments on Mr Sterling's motion? His motion is that recommendations 3 and 4 be accepted as in the Henderson report.

Mr McGuinty: I have a comment on Mr Polsinelli's interjection. He is suggesting, as I understand it, that with regard to perhaps the most substantive, right-to-the-heart-of-the-matter recommendation we simply make no comment.

The Chairman: We will get to that. I will let you speak to that when we get to it, but that motion is not on the floor at the moment; Mr Sterling's is.

Mr McGuinty: All right.

The Chairman: Are there any further comments with reference to Mr Sterling's motion?

Mr Sterling: You may remember that I put forward a motion to deal with the report in general, to approve the process, to approve what Mr Henderson and his committee had gone through in terms of dealing with all of the evidence and suggested that the committee, in a general way, endorse the work of the committee and send it on its merry way. It was the insistence of other members of the committee that we look at each individual recommendation and that is what we are doing. I do not know how you can, as Mr McGuinty has put it, go to the heart of it and leave it such that you are not going to make any comment on it. Once you are—

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The Chairman: Again, I would like to deal with your motion. Mr Polsinelli has no motion on the floor whatsoever, so let's deal with yours. Is there any further discussion on Mr Sterling's motion?

Those in favour of Mr Sterling's motion?

Those opposed? Mr McGuinty.

Mr McGuinty: I abstain.

The Chairman: You cannot abstain. You have to vote, one way or the other.

Mr McGuinty: Can I think it about it for a while?

Motion negatived.

The Chairman: Are there any further motions with reference to recommendations 3 and 4?

Mr Polsinelli: I am glad you asked. I have one.

The Chairman: Mr Polsinelli moves that the report indicate that the

committee is cognizant of the announcement made by the Management Board of Cabinet on 5 May 1989, and accordingly, makes no comment with respect to recommendations 3 and 4 of the Report of the Ontario Provincial Courts Committee.

Mr Mahoney: It seems to me what we are saying is we agree with the decision of Management Board, and I do not know why we do not say it. I do not expect the opposition to say it, but I frankly think we should say it. That is what we are really saying by saying that we acknowledge the raise that was granted and that the effective date, as pointed out, is 1 April 1989; that it was not an interim measure, as suggested by the judges' association, in the opinion of Management Board, and that this committee concurs with that.

The Chairman: We have the motion before us. Unless you are moving to amend it, I take those just as comments on Mr Polsinelli's motion.

Mr Kormos: I am wondering if Mr Polsinelli appreciates Mr Mahoney's saying what he did. I wonder if Mr Polsinelli could comment on what Mr Mahoney said about what that motion really means. I tend to agree with Mr Mahoney, that is the net effect. You should spit it out and say what you mean and mean what you say. Maybe Mr Polsinelli could comment on that.

Mr Polsinelli: I would be pleased to comment on it. I do not think that with respect to any of these recommendations we have to say yes or no. In some of them, there is a line in between we can take. In particular, when we refer to the salary that is being paid to provincial court judges, I do not think we necessarily have to say that \$105,000 is or is not appropriate.

My position is that the decision with respect to those two items has been made. It has been taken out of this committee's hands, and accordingly, as a committee, I do not think we should be either endorsing or rejecting them. I just simply say the decision has been made; therefore, we are not commenting on it.

Mr McGuinty: By the same logic, or lack thereof, we should dismiss-----

Mr Polsinelli: Is that parliamentary?

Mr McGuinty: By the same logic, we could justify dismissing other recommendations and other background material in this report.

What we have here is a report which is the result of considerable research. My understanding of the report from the evidence there is that they have gone about the job of estimating or stating what are appropriate salaries for judges, by analysis. They have done very well in terms of the responsibilities of the job, the independence ensured, the quality of incumbents and so forth, and by comparison, which is the basic way to go about wage and salary administration.

I found convincing the fact that Management Board concurs with the evidence that has been presented here by the Henderson report. I am not sure why we would simply say "No comment," because by implication, I think there always is the impression that we have some reservations about the propriety of it, and I do not think we have.

Mr Kormos: I agree that setting the specific salary is a difficult task, and that is one of the reasons why the Henderson committee, in its report, worked as long and as hard as it did to arrive at these particular

numbers. They are certainly in a far better position to determine what the appropriate numbers are than we are.

I am convinced there will be people in the community who will say, "Holy cow, that's an awful lot of money for judges to make." There will be other people who will say, "On the contrary, judges, in the tasks they do, should indeed be making more."

Mr Mahoney: It depends on whether you are in front of them.

Mr Kormos: But it all depends whose ox is being gored. Heck, I am no particular friend of provincial judges.

Mr Kanter: Tell us about this, Peter.

Mr Kormos: It is neither here nor there, which is why it is so important that the process of salary-setting be given, be delegated, to an independent body, as the Henderson group was.

What surprises me is the lack of interest and concern about paragraph 7 in that letter of agreement, and the subsequent letter to which reference was made some time ago. That was a letter confirming that Management Board considered itself bound by the letter of agreement between the Attorney General and counsel for the Association of Provincial Criminal Court Judges.

Once again, appreciating the candour of those who indeed said it, but to say that the 5 May announcement took this matter out of the committee's hands and basically resolved the salary issue, is to confirm that the government no longer has any intention of abiding by the letter of agreement that it exchanged with the provincial judges' association. It clearly talks about going through all this effort so that a salary level as of 1 April 1987 could be set.

Mr Kanter: It did not say what that salary level had to be.

Mr Kormos: Quite right, but setting a salary level for 1 April 1987. What was done is that, knowing this committee would be considering this report, the government said that, as of 1 April 1989, the salaries will be this and there will be percentile increases for the two years prior. It did not say anything about relieving the committee of the responsibility for considering recommendations 3 and 4 in the committee report.

If the government wants to demonstrate bad faith, outright refusal to live up to its agreement, then let it do it, but I certainly am not going to endorse a position that would condone the government's doing that. All the parties worked on the premise—certainly the judges did—that this was going to be retroactive to 1 April 1987 and that was what the salary range was going to be, and that provisions for annual increments would affect the salaries for 1988 and 1989 respectively. It really sets the whole process back further than it probably ever was in a long, long time to treat recommendations 3 and 4 this way.

I am also concerned about saying, "No comment." That very much seems to be an abdication of responsibility, notwithstanding the comments made about what the motion means in the minds of some of the people here. A motion that simply says, "No comment on the matter of salary issues," I guess is even worsened by articulating why somebody would take that position, and seems to me to be really bizarre.

What is interesting is that we have to assume that the 5 May announcement was made without serious reference to the Henderson report, because the government indicated it was not going to consider the Henderson report until after the standing committee on administration of justice had considered it.

There is no surprise about the figures. Obviously, somebody had read a synopsis. But we have to assume the government had not considered the report before its 5 May announcement, or else it once again would be shown to be cheating in the process, because the government promised it was going to consider and give great weight to the recommendations only after the standing committee on administration of justice considered the report and it was tabled.

So it seems to be wrong to take the position that has been taken by the mover of this motion and those people who would support him. I am certainly not in agreement with that. It is wrong to say "no comment." Obviously there is a whole bunch of recommendations about which there is not going to be any comment. In my mind, "no comment" should more appropriately mean concurrence rather than some sort of removing it, setting it aside or cutting it out of the totality of the report. I think it is a bad motion and in no way can I support that. Again, it is not for any affection or even lack of affection for however many hundreds of provincial judges there are around here, some of whom, perhaps, like me less than others; I am not sure.

1630

Mr Offer: Are we discussing and speaking upon Mr Polsinelli's motion?

The Chairman: That is right.

Mr Offer: Then I will pass.

Mr Mahoney: The argument that the opposition put forward is and has been consistent with regard to the Henderson report. Really, what I have heard both parties say is that we commissioned the report and laid down some sort of ground rules that would indicate that we would simply accept the recommendations of that report regardless of what they might be. It could come in at \$200,000 a year retroactive to 1987 and I do not accept that.

In fact, if you are going to put it here before the committee, I no more accept the fact that we have to blindly follow the lead or the recommendations of the Henderson report than I accept the premise that we just ignore it and not have any comment on it. I think that as a legislative all-party committee, we have the authority and the responsibility to analyse recommendations. There might be some that we would simply receive for information. That motion might be appropriate in some cases, but I think Mr McGuinty was bang on when he said that this is the heart of the issue; I think I agree with Dalton. I am rethinking my position, but I thought it was very well put that it is the heart of the issue.

I think you have to look at the total package: the indexation, the pension and the increase from what they were at. The real argument in my mind then becomes, I guess—not being a lawyer and not trying to complicate it beyond my ability to deal with the issue, the real issue is two years of retroactivity. Frankly, I think that it is a very generous package for very deserving people doing a very difficult job. I think we should say that.

I do not know if you can accept it as an amendment to Mr Polsinelli's or

a motion that, perhaps, would follow Mr Polsinelli's motion if it were defeated. But I would like the committee to adopt a recommendation which would simply say that we endorse the decision of Management Board to make the salary effective 1 April 1989. We could be more specific and say the decision of Management Board which was made on—I am looking for the date.

The Chairman: I think that would have to be in the form of a new motion. We will deal with Mr Polsinelli's first.

I did check with research, which I wanted to, about the impact this might have on the retirement package of a judge who might retire before this comes to fruition. I am advised by research that it will not impact because the retiree's pension would be indexed in accordance with increases in the salaries of sitting provincial court judges. I thought maybe that information should be available to the committee.

I have on the list—

Mr Kormos: One moment, I have to respond to how Mr Mahoney—

The Chairman: Well—

Mr Kormos: Well, I am responding on a point, then.

The Chairman: A point of what?

Mr Kormos: Of either personal privilege, order or accuracy.

The Chairman: Try either one of them and let's see whether—

Mr Kormos: That is right, accuracy. Mr Mahoney tried to characterize the opposition position with respect to this report and to what the committee was required to do. I know that Mr Sterling is going to want to speak for himself but Mr Mahoney is wrong. He knows that if he looked at the transcripts, they would show him to be wrong because I very carefully expressed what I believe was the encapsulation of the position of my party. That was that it is this committee's job to look at the Henderson report—

The Chairman: Excuse me for just a second. I have listened very carefully. Mr Sterling was the next person on the list. If he wants to give the floor to you that is fine.

Mr Kormos: Wait a minute. What are you saying, Mr Chairman?

The Chairman: It is not a point of order or privilege.

Mr Sterling: I yield to Mr Kormos.

The Chairman: All right, Mr Sterling has yielded.

Mr Kormos: Can I not correct the gross mischaracterization of my party's position by Mr Mahoney?

Mr Mahoney: Very accurate characterization. Go ahead and make your point.

Mr Kormos: Horsecrap. Accurate.

Mr Mahoney: Unparliamentary.

Mr Kormos: It is not unparliamentary; it is dead on.

Mr Mahoney: Sure, there is a lot of horsecrap around here.

Mr Kormos: Once again, you call a spade a spade. That is exactly what it was. To talk about \$200,000 is ridiculous. The transcript and the record of this committee's hearings will show that I expressed our position. That was that it was the job of this committee to look at the report, to look at the recommendations in the context of the report, and if those recommendations were ones which appropriately or properly flowed from the process that the report reveals that committee to have undergone, then it is not the job of the committee—other people have said this too, Mr Mahoney's own little colleague Mr Kanter talks about this and he talks about—

Mr Mahoney: He is not little.

Mr Kanter: I am not little. I am average size, five foot ten.

The Chairman: Let's keep the interjections down to a minimum. It is 4:35 pm now, and I am sure the judges would like to hear the result.

Mr Kormos: I bet you they will. Holy'zonkers they will. He talks about not tinkering and that was precisely the point, that it is not something to be tinkered with. The problem is that the government obviously has a couple of agendas here. Some of those agendas are not as overtly articulated as others. Obviously, in my mind, the government has very little intent on giving effect to that letter of agreement. That bothers me, but in my short time here I am getting more and more used to it.

Mr Mahoney is wrong when he talks about what my position was and certainly what Mr Hampton's position was. It was not a matter of saying: "Rubber-stamp it carte blanche. That is it, fait accompli." It was a matter of looking at it. If it was subject to criticism, fine, but I have not heard a single bit of criticism of Henderson, his committee or how it arrived at its facts and figures. Heck, here we are dealing with salaries and the government already said it is not going to—obviously when it imposed its 5 May 1989 decision on the province, it already indicated it is not interested in what Henderson has to say, so we have to go along with that too. To heck with Henderson in the course of doing that. That is not what the committee process is all about.

There has not been one single criticism of any of the facts or figures Henderson expresses in the course of that report. Unless there can be valid criticism, there should not be anything other than acceptance of that report. The whole overriding theme was independence of the judiciary and maintenance of a quality bench, quality administration of justice in the province. There has been nothing said by any of the government members in any of their efforts to tinker and jerk around with the numbers, to suggest that any of the reasoning of Henderson was flawed. That was the position of the opposition, at least with respect to the New Democrats.

Mr Mahoney: A Management Board raise is a good raise.

Mr Sterling: Two things I would like to say about recommendations 3 and 4. One thing is that I believe every member of this committee should feel some insult in that we are given a task to undertake in dealing with the Henderson report, then Management Board comes forward with a recommendation or an implementation of what is, in effect, the key recommendation of the whole

process. I would say that in terms of deciding how I might vote if I were a member of government or just as a member of a legislative committee, I would tend to support what Mr Henderson had said in his report on that count alone.

I believe this particular report was given to the Attorney General in the latter part of September. It was tabled in the House in the latter part of October. It was not put on our agenda until a furore was raised by the provincial court judges. Then the furore got louder and Management Board said, "Let's decide the issue before the committee decides it."

1640

The Chairman: I think, in defence of the committee, an item was brought forward early. You may recall it was pre-empted, I think, by Bill 4.

Mr Sterling: We are talking about the end of January or the first of February. This was in our hands since 28 October.

The Chairman: As I say, I am not commenting on what any other person in any other place may have done; I am commenting on what this committee did. I think as chairman I should try to set that straight. That is my recollection.

Mr Sterling: Let me set this straight too, Mr Chairman. It is well understood by all members of the opposition and the House leaders of this fine institution that the government can get before any committee report like this any piece of legislation it sees fit. If the government party in our subcommittee meeting says, "We want to deal with Bill 4," then in terms of the opposition there is no choice of dealing with the Henderson report before we would deal with Bill 4, Bill 124, Bill 187 or whatever other bills we were dealing with at the time. I am just talking about the history coming up to this thing. You and I can enter into the debate on the way you saw—

The Chairman: It is not a debate. I am not trying to justify anybody. I will not argue with any of your other points. I am saying simply that this committee did try to deal with it during the break when we were assigned only three days of sittings, I believe. We tried to put together a quorum of three people to get it on a priority basis and we could not do that.

I think, in fairness to the entire committee, that should not be an issue. It may be an issue with any other body you want to make it an issue with. If you want to make it an issue with the government or the opposition, that is fine, but I think the committee itself has endeavoured to move this along. I think the fact that that statement should be made is a matter of fairness to all of us. I think the record will bear it out.

Mr Sterling: The committee does not make its decision in isolation. The government controls the agenda of the committee because it has the right to put public government bills in front of any other business of this Legislature. They have chosen to do so over the past three months, until I got a call on 5 or 6 April, when I was in Sudbury at a caucus meeting, saying that the government whip wanted to have some meeting in the second or third week in April, when I was already sitting on two other committees.

That notwithstanding, I am just saying that we were given this task, presumably to determine what the salary levels should be by reference of the Henderson report and recommendations 3 and 4. That decision has been taken away from us, because the government has decided to give us a task and not withdraw that part of the task from us. I just find that not very nice. I hope

that members of the government party are not so tied that they can show independence, as my friend the parliamentary assistant said in the House the other day, an eensy-teensy little bit—

Mr Runciman: A modicum.

Mr Sterling: Okay, a modicum—and support sections 3 and 4. I do not know. It seems we go on and on on this particular argument, so let's call Mr Polsinelli's motion.

The Chairman: Mr Polsinelli, do you have anything further to say?

Mr Polsinelli: I just wanted to make my final case for my motion. I will be very brief. Much mention has been made of the letter of accord between Mr French, representing the provincial court judges, and the Attorney General. I would like to read the last sentence in paragraph 7, which says quite simply

"The views of the provincial courts committee on the proper levels of remuneration, allowances and benefits for provincial judges would be"—and this is the operative section—"recognized as recommendations to be given the fullest consideration and very great weight by the government in the decision-making process."

My motion basically says that they have recognized recommendations 3 and 4, they have given them great weight in the decision-making process and they have made the decision.

The Chairman: Okay. Ready to vote?

Those in favour of the motion moved by Mr Polsinelli? Those opposed?

Motion negatived.

Mr Mahoney: Mr Chairman, would you accept my motion at this time?

The Chairman: Mr Mahoney moves that the committee concurs with the decision of Management Board of Cabinet that the announced salary increase for provincial court judges was intended to be the increase for the year effective 1 April 1989.

Any further discussion needed on that motion?

Mr Offer: On a point of—

The Chairman: You do not have to look for a point. I am asking if anybody has anything to say on it.

Mr Offer: Mr Mahoney's motion speaks about the Management Board's decision as of 1 April 1989. I just want it to be clear that within that Management Board announcement there was a salary adjustment of retroactive pay increase of 4 per cent for 1987 and 4.6 per cent for 1988.

Mr Mahoney: I was looking for the date of the Management Board—

Mr Offer: May 5.

The end result would be \$105,000, I understand, but I think it is made up of a few incremental increases of retroactivity which I think should be embodied in that motion.

The Chairman: The clerk has to get the motion down. Did you get it down with that in there? Is it simply the additional fact that that salary adjustment includes a retroactive pay increase of 4 per cent for 1987 and 4.6 per cent for 1988?

Mr Offer: That is correct.

The Chairman: Is that added to your motion?

Mr Mahoney: Yes.

The Chairman: All right. Do any members wish to speak to the motion? Are you ready to vote on the motion?

Those in favour of the motion?

Mr Kormos: Record this vote, please.

The committee divided on Mr Mahoney's motion, which was agreed to on the following vote:

Ayes

Kanter, Mahoney, McGuinty, Offer.

Nays

Kormos, Runciman, Sterling.

Ayes 4; nays 3.

Ms Swift: I was out of the room when the motion was passed with respect to recommendations 5 and 6. Do I understand that recommendations 5 and 6 will now be treated as the other recommendations were treated, that is, I think the wording was that you take no objection to the other recommendations? They will be considered with the same group then?

The Chairman: I think Susan wants to know if there was any caveat attached. There was no caveat, as I recall. There was originally and that was withdrawn.

Mr Mahoney: That was the indexation.

The Chairman: Yes. It was adopted.

Mr Mahoney: I thought we already did that.

The Chairman: We did, but Susan was out of the room at the time.

Ms Swift: I was out of the room when it was carried, so I just wanted to be sure because there had been discussion about some caveats.

The Chairman: Maybe the clerk will just read the motion to you and that will help. Could you read that motion, please? The first one adopting recommendations 5 and 6.

Clerk of the Committee: That the committee adopt recommendations 5 and 6 of the Henderson report.

The Chairman: Okay. So there is no caveat attached at all.

We now have recommendations 7 and 8.

1650

Mr Offer: These are the last of the recommendations which I want to specifically address. I think that during our deliberations, no matter how one wishes to comment on the process we went through, we did hear some discussion of some depth in terms of the whole question of pensions and related benefits, especially pensions.

I think that it is obviously a crucial issue and obviously an issue of such importance that it must be addressed, but it is also a matter for which we heard some conflicting discussion in terms of what the ramifications were, if one recommendation, in terms of dollars, if another, in terms of another recommendation.

I would like to refer these particular recommendations to Management Board specifically for contemplation in terms of coming to some conclusion on these matters. I think it is not enough for us just to comment in passing on these. These are crucial and important. They are issues which have some conflicting actuarial evidence. I would like as a committee that we maybe defer our decision-making on them but surely refer them to Management Board for its immediate consideration.

The Chairman: Mr Offer moves that recommendations 7 and 8 be specifically referred to Management Board for consideration.

Mr Offer: I understand how all the recommendations in the Henderson report were important. I somewhat felt that in terms of the importance of all the recommendations that these should be dealt with and considered by Management Board on a priority basis.

Mr McGuinty: Again, I do not see the logic of this approach. First of all, I do not know what the actuarial conflicts are, either explicit or implicit, within these statements. Nor again do I see why this justifies reneging upon our responsibility to make a judgement in this regard.

To refer to the board for contemplation—I think that goes against the very spirit of the purpose of this committee, which is to take the evidence, which is abundant, as from the Henderson report, and the commentary we have been provided and, having done that and considered it and debated it, then to state our position. But simply to refer it back for contemplation—I am really not sure of it—that could be construed as reneging upon our responsibility to take a stand.

Mr Kanter: Mr Offer's comments certainly stirred a lot of interest, perhaps in difference of views at least, on this side of the committee today.

I am not generally in favour of referring something back, being seen in some way to not carry out our responsibility to the fullest, but I certainly am considering supporting Mr Offer's motion in this case, for three reasons. In this case, I think that Management Board put a lot of interesting information before the committee with respect to the costing of the proposals. My recollection is that they said in the Henderson report that, quite frankly, they were not in the financial costing business. They thought that this report should be implemented, subject to financial costing being done.

As I understand it, the three pension issues that concerned Management Board were, first, the fact that the government pays, in essence, the entire pension. There are some payments that judges make with respect to survivor benefits and group life insurance, but basically, unlike for other groups, the government pays the pension of judges.

Second, the recent salary increase and the one we have in effect just endorsed resulted in a very substantial increase in pensions for judges, at the current level of 45 per cent or 55 per cent, depending on length of service. In dollar terms, it was an increase of \$11,000 a year, so that all judges would at a very minimum receive a pension of about \$47,250, which, while it is not nearly as substantial as district court judges or other federal court judges, is, relative to the other pensions that are paid for by the provincial taxpayer, generous, quite generous.

The third point relates to some discussion we had—I think Mr French referred to it as well—regarding income tax guidelines, which I understand are expected to become law some time this fall, which relate to the amount of income that can be received in pensionable form. It is confirmed by the summary of Management Board's position that was put together by legislative research that judges' pensions right now, as of today's level, are richer than that which will be permitted by law.

It does cause me some concern for this committee to be recommending things which appear at the moment to be contrary to law and certainly to recommend a pension that is still richer than that which is expected to be permitted by federal income tax legislation. Those matters do cause me some concern.

For those reasons, I find myself in the rather, certainly for me, unusual position of supporting a motion to refer—personally, I see it more as a deferral motion than a referral motion—this matter to Management Board, in view of the three very unusual factors relating to pensions of provincial court judges. Those are my comments.

The Acting Chairman (Mr Polsinelli): Are there any other speakers on Mr Offer's motion?

Mr Kormos: A recorded vote.

The committee divided on Mr Offer's motion, which was negatived on the following vote:

Ayes

Kanter, Mahoney, Offer.

Nays

Kormos, McGuinty, Polsinelli, Runciman.

Ayes 3; nays 4.

The Acting Chairman: Do we have any other comments with respect to recommendations 7 and 8? No other comments? Then I guess we move on to the other items that were held. I take it, then, that recommendations 7 and 8 be dealt with in the same manner as all the other recommendations that have not been held? My understanding is that the only one left is recommendation 29; that is the one I held.

Mr Kanter: Would be easier, perhaps, if I served or if someone else served as acting chairman, if you want to speak to this item? Do you want to do it from the chair?

The Acting Chairman: I think we may have consensus on this one. As I understand it, this is the recommendation that removes the one week of payment for each year of service. I think this is an inappropriate recommendation and I would not support it. Perhaps we can get some comment from the committee members as to their feelings.

The existing system is such that, for each year of service, upon retirement the provincial court judge is allowed one—

Interjection.

1700

The Acting Chairman: I have just been corrected by legislative research. It is not recommendation 29; it is recommendation 28. That is the recommendation that removes the one-week payment for each year of service upon death or retirement.

I think it would be inappropriate to support that one, and I would ask for the committee's comments on that. If I were not in the chair, I would move that we not endorse that recommendation. If you look at page 7 of the paper that has been prepared by legislative research, you can see at the bottom of the page even Management Board's position on that.

Mr Chairman, having moved to my more appropriate seat, I would move that recommendation 28 not be endorsed by this committee.

The Chairman: Recommendation 28 or 29? It was 29 you had addressed.

Mr Polsinelli: It was 28. I held 29 incorrectly and I corrected myself. Recommendation 28, with respect to removal of a one-week payment for each year of service. Perhaps I can ask for assistance from legislative research. Would that do it? Do we just vote against recommendation 28, or do we have to specify—

Ms Swift: I am not entirely sure what your question is.

The Chairman: He wants to know if, in order to eliminate recommendation 28, we have to vote against it.

Mr Polsinelli: No. As you pointed out to me, recommendation 28 of the Ontario Provincial Courts Committee report would remove the benefit provincial court judges presently have, that is, one week's benefit for each year of service.

Ms Swift: That is right. The termination benefit; that is what we are referring to.

The Chairman: Mr Polsinelli moves that this committee not endorse that recommendation so that provincial court judges would still be entitled to the termination benefit.

All right. Any members wish to speak to that motion? Is everybody aware of what that motion is?

Mr Mahoney: No, sorry.

The Chairman: Mr Polsinelli has moved that we do not endorse recommendation 28 of the Henderson report.

Mr McGuinty: Did he say why?

The Chairman: He did.

Mr Mahoney: Could he say it again?

The Chairman: Management Board had a position at the bottom of page 7--

Mr Kanter: If we agree with Mr Polsinelli on this one, perhaps he could agree with the position of Management Board on page 6. Maybe we could have a little tradeoff here.

Mr Polsinelli: I think this goes a little further than the spirit of tradeoff. This is a benefit that existing provincial court judges who have been sitting on the bench have assumed was theirs. Many of the judges who have been sitting there for 10, 15, 20 years feel they are presently entitled to one week of pay for each year of service they already have in place. In effect, what we would be doing by accepting the Henderson recommendation and removing that is taking away a benefit they already feel they have and have accumulated over the years. I think that is unfair and I do not think we should support that recommendation.

Management Board's position is that the cost implications are minimal. Accordingly, we would be doing a tremendous disservice to the existing provincial court judges if we endorse the Henderson recommendation by removing that benefit they presently have accrued and are entitled to.

The Chairman: I would draw to the committee's attention that we did have a representation from a judge—it is in your package—Judge MacDonald, about that. Even in Management Board's position, it said it would have minimal cost implications.

Are there any comments by any other members of the committee? Are we ready to vote on Mr Polsinelli's motion?

Mr Kormos: A recorded vote, please.

The Chairman: A recorded vote is called for.

The committee divided on Mr. Polsinelli's motion, which was agreed to on the following vote:

Ayes

Kanter, Mahoney, McGuinty, Offer, Polsinelli.

Nays

Kormos, Sterling.

Ayes 5; nays 2.

Mr Offer: On a point of order, Mr Chairman: There was a motion I previously brought up, and I was wondering if the clerk could read that motion. My motion dealt with recommendations 7 and 8.

Clerk of the Committee: "That recommendations 7 and 8 be specifically referred to Management Board for its consideration."

The Chairman: I regret to say that even the chairman has to leave the room once in a while for calls of—

Mr Polsinelli: Does that complete our deliberation of the recommendations?

Mr Offer: The reason I brought that up was that when the vote taken, a member thought the motion read "contemplation" as opposed to "consideration." I think the clerk has clearly indicated that it is for consideration as opposed to contemplation, and as such is stronger than what might have been earlier interpreted. On that point, I wonder whether we might be able to relake that vote.

The Chairman: With unanimous consent you could do that, but that is the only way.

Mr Offer: That is right. So I ask unanimous consent.

Mr Mahoney: I think you can also do it if someone had voted in the negative.

The Chairman: I do not think that is the tradition of the Legislature. Is that right? I am correct, the clerk tells me. The only way you can do it is by unanimous consent or if a motion were to be placed which was not considered by the chair to be identical or dealing with the same matter.

Mr Kormos: Knowing that other members of this committee would give their unanimous consent were I to find myself in a similar situation, knowing that and trusting that I am right in that regard, I am prepared to give my share of that unanimous consent if it is needed.

The Chairman: Is there unanimous consent?

Mr Sterling: I am going to have to say no. I will tell you why. I was not here when the vote was taken. My colleague was here when the vote was taken and I was not privy to that debate. It has been dealt with by another member.

The Chairman: I could perhaps add that I was out of the chair, having been here since 3:35, because if you want the perfect, honest answer, I had to go and visit the executive suite down the hall.

Mr McGuinty: I am the culprit who provoked this reaction, whether the wording was "consideration," which requires thoughtful review, or "contemplation," which requires navel-gazing. My concern was really that I construed that motion as requiring us to renege upon our responsibility, which I think is to state our position.

Mr Mahoney: Perhaps part of the concern, too, might have been that the motion was interpreted by some as being one of simply saying nothing to Management Board in relation to the issue. If you look on page 6 of the

research document that has been prepared for us, my interpretation of Mr Offer's motion was that Management Board was recommending that the pension recommendations in the report be deferred. There is always some argument about the words "referred" or "deferred" or whatever, and I think that is perhaps where the confusion may have arisen.

1710

I am prepared to structure a motion to the effect that due to the complexities within the income tax guidelines for deferred income, the Management Board recommendation of deferring the pension recommendations in the report at this time be adopted.

I think that is a different motion which the chair could accept, that perhaps would accomplish the opportunity of voting on it again.

The Chairman: Can you first read to me the original motion that was defeated?

Clerk of the Committee: That recommendations 7 and 8 be specifically referred to Management Board for its consideration.

The Chairman: My initial reaction would be that the motions are different, but I would just like to have a few seconds with the clerk.

Mr Sterling: The original motion was "consideration"? And you do not like that?

Mr Offer: There was discussion that it did not say "consideration," but rather that it said "contemplation."

Mr Sterling: What is recorded, "consideration"?

Mr Offer: That is right. But it has been indicated that there was a vote made by a member on the basis that the motion read "contemplation" as opposed to "consideration." We are asking for unanimous consent to take a new vote based on that clear understanding that it said "consideration" as opposed to "contemplation." Mr Kormos agreed to it.

Mr Kormos: I note that it was just because of the application of the old Golden Rule: "Do unto others as you would have them do unto you."

Mr Sterling: I will give unanimous consent.

Mr Kormos: What is the problem? The problem is that people thought it said "contemplation," when it only said "consideration"? And you think "contemplation" is a stronger word than "consideration"?

The Chairman: In any event, I gather we have unanimous consent to deal with the issue with the word "consideration."

Mr Mahoney: So you do not need my motion.

The Chairman: I do not need your motion.

Those in favour of the original motion by Mr Offer.

Mr Polsinelli: You are taking the vote again?

The Chairman: Yes.

Mr Polsinelli: I take it you have unanimous consent to do that?

The Chairman: Yes. Those in favour of Mr Offer's motion---

Mr Kormos: It was a recorded vote the first time around, was it not?

The Chairman: All right, recorded vote.

The committee divided on Mr Offer's motion, which was agreed to on the following vote:

Ayes

Kanter, Mahoney, McGuinty, Offer.

Nays

Kormos, Polsinelli, Sterling.

Ayes 4; nays 3.

The Chairman: I take it we have dealt with all of the items. Perhaps we do or we do not need a motion indicating our acceptance of all the other recommendations of the report.

Mr Polsinelli: I would like to have some comment on the preamble leading to our discussion of the various recommendations.

As I stated earlier in our discussions today, in light of the Attorney General's announcement of a number of months ago indicating that it was his intention to attempt to unify the courts in Ontario, I would think it would make prudent sense that in dealing with the salaries and the benefits of the provincial court judges, every attempt should be made, while implementing the Henderson report, to somehow move those salaries and benefits of the provincial court judges closer to the salary and benefits of the district court judges, so that eventually when the courts are unified, you have fewer differences that separate the district court, Supreme Court and provincial court judges.

I would think that with the committee's approval, something in the preamble should indicate that the overriding principle that Management Board should take into consideration in implementing the report should be the eventuality of bringing the provincial court judges salaries and benefits to be comparable to that of the district court judges.

While that preamble would not necessarily say that they have to move today in that direction, it would necessarily imply that while they are making the adjustments to the benefit package today and as they make future adjustments, their overriding principle be to bring provincial court judges salaries and benefits to something that is comparable to what the district court judges are receiving.

The Chairman: Is that in the form of a motion?

Mr Polsinelli: I do not know if we want it in the form of a motion, because I do not want to lose another one today. I was hoping we could get some kind of consensus.

The Chairman: I will see if we have unanimous consent to that.

Mr Offer: I have some concerns.

The Chairman: We do not have unanimous consent. You will have to put it in the form of a motion, Mr Polsinelli. The clerk already has it, so perhaps he could read it.

Clerk of the Committee: I do not have it complete.

The Chairman: Maybe you could read what you have, and Mr Polsinelli—

Mr Polsinelli: I have some scribbles. Maybe Mr Arnott can read what he has written down. He is usually more intelligible than I am.

Clerk of the Committee: It is also scribbled.

"That Management Board adopt as an overriding principle in implementing the recommendations of the Henderson report that it move in the direction of implementing salaries and benefits for provincial court judges comparable to those of district court judges."

The Chairman: If you are going to be technically correct, as the recommendations are that district court judges will no longer exist, perhaps the words "federally appointed judges" should be used instead of "district court judges."

Mr Mahoney: Is that not contrary to the first recommendation we adopted?

The Chairman: You can speak to that if you wish.

Mr Mahoney: I am asking.

The Chairman: I do not consider it to be out of order.

Mr Polsinelli: Perhaps legislative counsel, in drafting the report, can work on it a little. I am not suggesting in the motion that the salaries of provincial court judges and the benefits be immediately comparable to those of district court judges. All I am suggesting is that the direction of the changes in their salaries and benefits be in the direction of bringing them closer to that of the district court judges. I am not even suggesting a time frame.

For example, if you recall the discussions we had in terms of the indexing package, if they are going to have provincial court judges salaries indexed, then rather than choosing the consumer price index, why do you not use the aggregate industrial wage that is presently being used by the district court judges? That could be one of the items Management Board should be taking into consideration in adjusting the benefits.

The Chairman: We did get some information on those expressions. The consumer price index for 1988 was 4.4; for the first quarter of 1989 it is 2.7 per cent.

For the industrial aggregate: for 1988 it was four, and for the—

Ms Swift: The first quarter, it is 5.2.

The Chairman: So you can see they pretty well come about as the same thing.

Mr Polsinelli: The point was simply one of having a similar structure in place, so that if the day ever comes that the courts are unified, as I said earlier, there is less to change, there are fewer differences.

Mr Kanter: I do want to comment on Mr. Polsinelli's motion. I think it was brought with the best intentions, however, with respect to my colleague, I think he is going at the right objective in the wrong way.

I think there are two ways of achieving this objective. The first way is the way he has suggested, which is to bring the salaries and benefits of provincial court judges up to district court judges. That proposal was discussed at some length in the Henderson report and it was totally rejected. They suggest it would be imprudent for this committee in this report to recommend any linkage between the salaries of the provincial and district court judges, and I accept that, for the various reasons given in the report.

As Mr. Polsinelli has pointed out, there is a direction the Attorney General has moved in to say that, yes, we should have a unified court system, that all judges should be appointed and given the same responsibilities. I am absolutely certain that the same pay and benefits will follow that.

1720

However, that is a long process. This very committee is charged with the next step in that process. In fact, after we complete the debate on the Henderson report, which I hope is soon, we will be considering the scheduling of that debate in this committee.

I would say that the better way of achieving the objective Mr Polsinelli is looking for, and I think it is a valid objective, is to merge the courts, make the positions similar, given similar responsibility, and then, naturally, the same level of salaries and benefits will follow. I do not think there is any doubt in anyone's mind that judges with similar responsibilities, hearing similar cases will get similar remuneration.

Given the fact that the Henderson report very strongly rejected linkage between provincial court and district court judges, given the fact that this committee is charged with the responsibility of looking at the next step of the administration of courts reform, merger of courts, but that it is going to be something that takes some time, I think it would be much preferable to pursue the second course rather than the first course recommended by Mr Polsinelli, and I will not be supporting his motion.

Mr Mahoney: Could I ask for some clarification? Earlier we voted to adopt recommendations 5 and 6. The documentation I have from Susan Swift refers to salaries paid to superior court judges, adjusted by the industrial aggregate or seven per cent, whichever is less, and that the salaries of district court judges are adjusted annually so as to maintain an absolute differential of \$5,000 between their salaries and those of superior court judges.

Did Mr Polsinelli make a motion earlier that was included, or was it part of our discussions to improve it the same as the district court judges?

The Chairman: He withdrew the motion, because we were not sure what—

Mr Mahoney: There was no indexation figure, but the principle of indexation, without a cap—

Mr Polsinelli: That is not my understanding. My understanding is that we accepted recommendations 5 and 6, was it not?

The Chairman: Yes.

Mr Polsinelli: And recommendations 5 and 6 say they are going to use the Ontario figures of the consumer price index and no cap.

Mr Mahoney: That is what I just said. The principle of indexation—I did not know if it was the industrial aggregate or CPI—is set, so your future increases for these salaries are now basically adopted in the form of the consumer price index. If that is true, how would you then give some sort of direction to the government that it should close a gap, when in fact you have put in place a formula to deal with future salaries to take it out of the annual review issue. Or is it going to be greater increases than CPI?

The Chairman: They are pretty close, as I explained. I sent out for this, and the increases under either one of those is pretty close, 4.4 and 2.7 with the CPI, and four and 5.2 for industrial indexing.

Mr Offer: In response to Mr. Mahoney's inquiry, though the committee has recommended salary indexation, it surely ought not to be read as saying that that is the only way in which judicial salaries can be increased. There is always the possibility of another Henderson-like report coming out in three or four or five years, which says notwithstanding the salary indexation of X per cent over the last period of years, we recommend that the base be increased to another limit.

I think what we are attempting to do through this is to say that judges' salaries, we suggest, ought to be at least indexed on a year-by-year basis, and it is always within the discretion of the government or whatever to make any further increase over and above salary indexation, which could ostensibly close a gap.

The Chairman: It is also provided for in the Courts of Justice Act that there be a review mechanism.

Mr Mahoney: Just to finish with that helpful information, it would be my comment that to adopt the motion you have before you, Mr Chairman, would be tantamount to saying we agree with the Management Board decision that was detailed in the motion I placed on 5 May, but in a sense we do not, because we think the gap should be closed more. I really take it as being contradictory to the adopted position of this committee and, unfortunately, although I would like to support my colleague, cannot do so.

Mr Polsinelli: I do not agree that it is contradictory. My motion simply says that the direction of the salaries and benefits of provincial court judges should be towards those of district court judges. The committee's endorsement of Management Board's decision confirms that direction where salaries are brought from a base of \$86,000 to \$105,000. The motion does not say that provincial court judges salaries should be \$120,000 as of today, similar to the district court judges—or \$130,000 or whatever they make; I do not have the figures in front of me.

All it says is that the direction should be that direction in terms of salary; the direction should be that direction in terms of the benefits

package. Right now, the district court judges and the provincial court judges have two quite comparable, yet different, benefit packages, other than perhaps the pension plan.

My suggestion merely says that as you are tinkering with the system, as you are making amendments to their salaries, as you are making amendments to their benefits, consider the existing system presently in place for the district court judges. As you are making amendments to the provincial court judges benefits, do not bring them into conformity but bring them closer, make them more comparable, if you could do that, to the benefits presently received by the district court judges; with the eventual aim of having two sets of judges, provincial court and district court, who are receiving comparable benefits and comparable salaries.

It does not mean it has to be next year. It does not mean it has to be in the next 20 years, as long as that direction is there. That is my motion.

The Chairman: Okay. Any other members wish to speak on that?

Mr Sterling: I would only say it is somewhat contradictory to the member's lack of support for recommendations 3 and 4 when this was put before this committee, and that 3 and 4 would have increased the salary level of the provincial court judges to a closer proximity to the district court judges. Therefore, I think this is a little bit of face-saving at this time.

Mr Offer: I have listened closely to that motion. I know it is in the form of a preamble, a preamble to a report which we have not completed yet in terms of the following recommendations. My concern is just hanging one's hat on salary or dollars for one level of court as opposed to another level of court. I do not think that was the motivating factor for Henderson and the committee and all the work they did. Their motivation was: What can and should be recommended in order to attract the best qualified candidate for a position of extreme importance in this society? I do not want to hang my hat on, "Just make certain it's close enough to a superior court judge and then it'll be okay."

I think Henderson dealt with it in a much different way. They looked at it as: What should we do in terms of provincial court judges to make certain we get the highest quality and best qualified candidate? Though I understand what Mr Polsinelli has moved, I have some concerns in its constraints. I think the mandate of Henderson was broader than that and that is why I cannot support it.

1730

The Chairman: Okay. Ready to vote? Those in favour of the motion by Mr Polsinelli?

Mr Polsinelli: I am going to develop a complex, Mr Chairman.

The Chairman: Don't feel bad. When I sat on city council in Brampton, every vote was like that.

Interjection: And look where it got you.

The Chairman: That is right. Those opposed? Mr Kormos, are you voting, or did you vote with Mr Polsinelli?

Mr Kormos: No.

The Chairman: You cannot abstain. You have to vote.

Interjection: He voted.

The Chairman: Did he vote? Oh, all right. I did not see your hand up.

Motion negatived.

The Chairman: Susan has asked for some instruction in the preparation of the report. I will let Susan speak for herself. What instruction do you need, Susan?

Ms Swift: The committee has talked about and has mentioned process, I think, throughout the hearings, and I just wondered whether the committee wanted to consider or wished to make any kind of statement about the process. At this point, I see the report as basically saying that you endorse all of the recommendations, except the four that were dealt with, and then I would just separate those out. The report would be very small, without argument or support or statements and comments in support of those.

Mr Sterling: I will be dissenting to the report.

Mr McGuinty: Susan, you are separating out the four that we did not support explicitly?

Ms Swift: Yes.

Mr McGuinty: You will not leave it in terms that imply that we have serious reservations or negative feelings about them?

Ms Swift: I am sorry. I missed the last part.

Mr McGuinty: In terms of the four that you do not state we support, you will not state that in terms which could be construed as meaning we have concerns about them or negative feelings about them?

Ms Swift: About which? The four?

Mr McGuinty: The four that we are referring to Management Board for consideration or contemplation.

Ms Swift: No. What I had taken from the comments was that there were reservations about them and I would---

Mr McGuinty: There were? Well, wait a minute now.

Ms Swift: About the four specifically.

Mr McGuinty: Not reservations surely? That implies negative feelings about them.

Mr Sterling: Recommendations 3 and 4, there was definitely---you said it was wrong.

The Chairman: I think we have to be guided by the motion.

Ms Swift: I think it said quite clearly that recommendations 7 and 8 be referred to Management Board. I would use almost the wording of the motion on that one.

The same with recommendation 28 that was not endorsed. The committee did not endorse recommendation 28, and it was decided by your colleagues to set up a motion with respect to the other two.

Mr McGuinty: Okay, Susan.

The Chairman: Do you have any further instructions for Susan?

Mr Offer: I think Mr Kormos was ahead of me.

Mr Kormos: I too had prepared a brief dissent and the thrust of it is that we approve of the process utilized by the Henderson committee in arriving at its recommendations. Paramount consideration must be the maintenance of the independence of the judiciary and of the quality of administration of justice. We consider the recommendations made by the Henderson committee to be reasonable and we therefore urge the government to give effect to those recommendations. We particularly urge the government to abide by its letter of agreement with the provincial judges association, being its commitment to give great weight, among other things, to the recommendations of the Henderson committee.

The Chairman: All right. I understand from the way this place works that the research officer is a research officer for the committee. She will prepare the draft report for us in terms of the majority report. If you wish to submit a dissenting report, certainly you are entitled to do that but you arrange to have it prepared.

Mr Offer: Just as a point, I am wondering if in the body of the report there could be some indication—in fairness, through our process, much of the discussion that took place today, and in fact earlier, really did hinge on recommendations 3 to 8 and whether we should as a committee acknowledge that particular point; not in favour or against but really just to acknowledge that much of the consideration, much of the input from our perspective revolved around recommendations 3 to 8.

The Chairman: Is there agreement that—

Mr Kanter: I am not so clear on the point that Mr Offer is making, but it seems to me that perhaps he is suggesting that the efforts of the Henderson committee were very useful, that we commend their efforts, that we support the report with some exceptions. It seems to me that the report was extremely useful. In fact, out of 30-odd recommendations, we have adopted far and away the vast majority of them. Is that basically the tone here? I am just trying to understand the purpose of your comments.

Mr Offer: Certainly that was coming up, but I just wondered as a committee—and I put this more as an inquiry—whether we should acknowledge in our report that as far as our committee was concerned, in terms of the information given to it through our process, that much of it dealt with the salary issue, the salary indexation issue and pension issue. It just might serve as a focus as to what we heard, but surely as an addition, we should obviously commend the report of Henderson and its recommendations.

The Chairman: If you can specifically put that, we would require unanimous consent, failing which you would need a motion, and it would have to be—is there unanimous consent? We have already heard a dissent from Mr Kormos that he is going to file, and I do not know whether he is joined in that by any other member.

Is there unanimous consent that we would give credit, which is what I gather you are saying, to the Henderson report and to the provincial courts committee for the laborious task they took on? Any difficulty with that? Mr Kormos is not here so I do not know whether we have unanimous consent or not.

Mr Sterling: What are you asking for unanimous consent for?

The Chairman: Mr Offer, if I read him correctly, was asking that a preamble to our report would be that we thank the members of the provincial courts committee for the significant task that they carried out in producing the report, and then our recommendations would follow. We need unanimous consent for that, and I would like to have Mr Kormos in for that.

Mr Kormos, despite the dissenting report that you have given us on the record, it has been suggested by Mr Offer that we acknowledge in the preamble to our report the laborious service that the provincial courts committee carried out in terms of the hearings in providing us with the information for our consideration as the justice committee.

Mr Kormos: That is real big of them. I have no quarrel with that.

The Chairman: So then we have unanimous consent that wording of that type would be in the preamble.

We will have the report drafted by Susan.

Mr Kormos: Excuse me. Is that going to be in the preamble?

The Chairman: Yes.

Mr Kormos: Because that is a dead giveaway. That is like somebody coming up to you and prefacing what he says by, "Nothing personal, Mr Callahan."

The Chairman: We thank you for that additional information, Mr Kormos.

We will have Susan prepare the draft. I understand that the judges are already receiving the increased compensation, so we can perhaps give Susan some leeway in terms of preparing this draft report. When will you feel comfortable about that?

Ms Swift: Next week.

The Chairman: All right. Susan indicates that it may be available for us next week. Do you wish to have the draft report reviewed by the entire committee or by the subcommittee?

Mr Sterling: Subcommittee.

The Chairman: Is that agreed by everybody?

Agreed to.

ORGANIZATION

The Chairman: We have also before us a couple of other items before we adjourn, the discussion of the schedule of business during the recess, that is, assuming we have a recess. You have a letter before you which is one

proposed to be sent by the clerk of the committee to the government House leader. We are asking for four weeks of meeting time during the adjournment.

We have already dealt with the report of the provincial courts committee. Do you want to refer this to the subcommittee as well and be governed by it? Do we need this?

1740

Mr Kanter: Perhaps we ought to consider this now because of summer holidays and things. I think we should do it now.

The Chairman: Yes, I think we should consider this now because the clerk has to get this out. There is some urgency on it. You see the items that are set out therein--

Mr Sterling: Who says four weeks?

Clerk of the Committee: This a draft letter I have prepared for the chairman's signature, not my own, and I have put in the kitchen sink for you to select out what you do not need.

Mr Offer: Is four weeks the kitchen sink? Why could this not be eight?

Clerk of the Committee: No, that could have been a blank. That is for you to fill in.

Mr Kanter: So it is blank weeks.

Mr McGuinty: This is not a motion, but I would amend the statement of letter to increase the four to six, from 1 August until 9 September.

The Chairman: Have you got a crystal ball that you can be that definitive? The clerk tells me that there may be caucus business in the first week of September which might preclude that.

Mr McGuinty: Okay, I stand corrected.

Mr Sterling: Bill 149 probably will take about four weeks in itself, after we travel to every corner of this province on that bill.

The Chairman: We have already done the travelling public hearings on Bill 4, except here in Toronto. We had previously slated four days for Bills 2 and 3, I think it was, or four meeting days--three days I am advised by the clerk for Bills 2 and 3. I think we had slated some earlier time, four days for Toronto hearings on Bill 4. That is seven. You may be right that there may be--I do not know what the hearings would be on Bill 149, but we are certainly probably going to travel. So what do you want to do? We have to get this off.

Mr Kanter: I have a specific suggestion with respect to Bills 2 and 3, which I think should be the next logical business before the committee. As I understand it, next Tuesday 4 July, we expect that the House will still be in session, and I just wonder if it would be possible to have the Attorney General and his representatives here to do an explanation of that bill at that time, following which--

The Chairman: Just let me stop. Is there unanimous consent to that?

Agreed to.

Mr Sterling: Do we have one day next week?

The Chairman: We have only one.

Mr Sterling: We have one day. We have Tuesday next week. That will probably be our last meeting, I hope, before we get out of here.

The Chairman: Do you know something too?

Mr Sterling: I do not know anything, but I suspect that that is the day.

The Chairman: Is it agreed that we have the Attorney General's—

Mr Sterling: Are we going to deal with this report?

The Chairman: The report is going to be dealt with by the subcommittee.

Mr Polsinelli: Can I make another suggestion?

The Chairman: Hang on just a second. I just want to get this—

Mr Polsinelli: Mine may be constructive.

Mr Kanter: Mine was intended to be constructive.

Mr Polsinelli: You are right.

Mr Mahoney: Claudio wants to win one.

Mr Polsinelli: Yes, let me win one. I was going to suggest in terms of the summer schedule—

The Chairman: We are not dealing with that schedule yet. I just want to deal with —

Mr Polsinelli: Let the subcommittee deal with that.

The Chairman: Just a second. We have to send the letter to the House leader. I want to deal with Mr Kanter's suggestion. Is there unanimous consent then that we have the Ministry of the Attorney General address us next Tuesday

Mr Sterling: One of the problems is if on Bills 2 and 3, we head out to—I think there are going to be some hearings. I think there will be at least a week of hearings on that. It would be more fruitful for us, when we go into that, if that happens on the 1 August or 10 August, to have those briefings at that time, on the Monday of that week or whatever, so that at least we can recall what all the issues are and we have the same members briefed as those that are going through the hearings.

I just think we will be losing it by having a briefing on Bill 2 and Bill 3. It may be informative and all the rest of it, but we may preclude ourselves from asking for the same thing —

The Chairman: The clerk raises a very interesting point. Does that

mean we are not dealing with Bills 2 and 3 next week? We have advertised that we are dealing with them.

Mr Sterling: Oh yes, we did say that. If we do have people who want to appear, that is fine and dandy.

Mr Offer: Has there been any response to the advertising?

Clerk of the Committee: The advertisements have not appeared yet. They should appear Wednesday or Thursday in the Globe and Mail and the Toronto Star. Letters did go out Friday to those people whose names and addresses I was given, and they should have received those by courier Monday. One person I spoke to on the phone on Friday did indicate that he would like to appear.

The Chairman: We have just a short time left. Can you give me some direction about what you want to do?

Mr Polsinelli: I would suggest that the subcommittee deal with these issues, taking into consideration the time commitments that members have during the summer. In other words, I could tell you when I am busy, you could just take a note of when everybody is busy, and the committee will try to work its way around that. If it cannot, then it just puts something together, and I am prepared to abide by whatever decision it makes.

The Chairman: We have to get something off to the House later, if Mr Sterling is right about the imminent—I was going to say downfall of the House, but that would be bad terminology—recess.

Even though it has been dealt with, we have to have the authority to deal with the report of the Ontario Provincial Courts Committee or to subdelegate it to the subcommittee. So we know we have to leave that in there.

We have to deal with Bill 2 and Bill 3, because we have advertised for it. Bills 2 and 3 would be Tuesday 4 July, and then the two sitting days after that? Is that what we said?

Clerk of the Committee: It was to be 4, 10 and 11 July if the House is sitting; other days to be determined if the Legislature is not sitting.

The Chairman: Maybe we could put in that we will have it on 4 July and then we will see what is up and play it by ear. Are we agreed that would be what we would put in the letter?

Bill 4: We indicated we would have public hearings in Toronto. I think we said we would have four days at least. Can we leave that in there as the fourth item? Agreed? Okay.

Mr Polsinelli: Do we want days to deal with the report on Bill 4? If we have four days of hearings—

Mr Offer: My understanding was that that week, four days or whatever, was for public hearings and clause-by-clause. I thought we did not have as many people from Toronto as we might have initially expected.

The Chairman: That is my understanding, too, that the four days were adequate for the hearings as well as the clause-by-clause.

Clerk of the Committee: It should be. There were 16 names outstanding on the list.

The Chairman: The next item is Bill 145, the Gun Replica Sale Prohibition Act, which is listed as item 5, and then Bill 149, the Trespass to Property Amendment Act, item 6. What do you want to do there, gang? For the replica bill, you might want to look at other jurisdictions.

Mr McGuinty: I am curious about Florida.

Mr Sterling: You could see the real thing in Florida.

Mr Kanter: I suggest Detroit, Washington, DC, Chicago and Los Angeles.

1750

The Chairman: What do you want to do? Do you want to leave Bill 145 ahead of Bill 149? Bill 145 is getting some press recently and it is -

Mr Offer: Not like Bill 149.

The Chairman: —something we should deal with. It is fairly high profile.

Mr Sterling: I think Mr Offer is very anxious to get Bill 149 on the table.

The Chairman: What do we want to do? We are almost running out of time. Should we leave Bill 145 where it is? Unanimous consent?

Interjections.

The Chairman: We will probably require hearings. I think we will require hearings, but we may require them elsewhere. I guess the subcommittee can determine that.

Mr Polsinelli: The subcommittee can decide.

The Chairman: All right. Then Bill 149 will be the final item, unless we get something referred to us between now and the recess of the House. Is four weeks going to be enough?

Mr McGuinty: No. Why not state four to six weeks? That would give lots better holiday time.

Mr Sterling: How many people have asked to make submissions on Bill 149?

Clerk of the Committee: I have several feet of mail to distribute to members of the committee.

[Laughter]

Clerk of the Committee: I have not had an opportunity to read it all thoroughly. Most people are not requesting to appear. Most people are sending in a form petition letter.

The Chairman: I often wonder, just as an aside, how Hansard records that last laugh. Just "ha ha ha" or what? How do you do it?

I think four weeks is not going to be enough to even get started. Does anybody wish more than four weeks?

Mr Sterling: I think it depends on how long each of these hearings are going to take. I would just as soon have Bill 149 here for the year and a half until the next election.

Interjections.

The Chairman: Come on. Is four weeks what we are leaving in? Or should we do what Mr McGuinty said, give ourselves a breather after the House recesses?

Mr Sterling: Four, as far as I am concerned.

The Chairman: Four weeks? We do not have unanimous consent.

Mr Polsinelli: Five.

The Chairman: Five? We have a compromise: five. Do we have unanimous consent on five? We probably will not get them. Do you want to designate specifically the period when we will start sitting so we can all plan our lives? What is the suggestion for five weeks? You have a calendar in front of you.

Mr Sterling: Nothing before 1 August.

Interjections.

The Chairman: How about 7 August, 14 August, 21 August, 28 August?

Mr McGuinty: Do the four or five weeks have to be consecutive? Mr Chairman, may I suggest--

The Chairman: The clerk advises that caucus retreat, for most caucuses if not all of them, is the week of 4 September. We will have to start the last week in July if you want five weeks.

Mr Sterling: The week of 7 August is out for me.

Mr Kanter: That week is out for me--

Mr Mahoney: Can we not just set it and then you get subs if you cannot be here?

Mr Sterling: Some of the business carries on. Our caucus believes that the guys who hear public submissions should be here for clause-by-clause; sort of an unusual concept.

Mr Mahoney: Are you trying to tell us you have not made up your mind on the issue yet?

The Chairman: Just a second. We are going to run out of time.

Mr Offer: Why must we only sit in the month of August? What has happened to September? What happened to July?

Mr Kanter: September after the caucus retreats. We could meet in September. The House is not going to be called back, I would not expect, on 11 September or 18 September--

Mr Offer: If we are going to do five weeks, why not one week in July, two in August and two in September?

Mr Kanter: Good suggestion.

Mr Offer: And maybe we can dovetail some pieces of legislation---

The Chairman: What was it again?

Mr Offer: One week in July---

The Chairman: Which week?

Mr Offer: The week of 17 July.

Mr Sterling: I am away.

Mr Offer: 24 July?

The Chairman: Is the week of 24 July all right? All right. Which weeks in August?

Mr Polsinelli: The first two weeks.

Mr Kanter: No, the last two weeks.

Mr Polsinelli: I am away the last two weeks.

Mr Kanter: I am away the first two weeks.

Mr Polsinelli: Let's make it the second and third week.

Mr Offer: Why do not we do it the first and third week? Why do we not do 7 August and 21 August?

Mr Sterling: I approve of the budget.

Mr Chairman: Do you? Thank you. Does everybody approve of the budget? We are going to run out of time. We need that definitely in hand. Everybody agrees with the budget? A motion, please.

Mr. Kanter moves acceptance of the budget.

Motion agreed to.

Interjections.

The Chairman: Is it five weeks? We do not have to give them specific dates do we? All right. We are going to give them the week of 24 July, the week of 7 August, the week of 21 August, the week of 11 September and the week of 18 September.

We stand adjourned until after routine proceedings next Tuesday.

The committee adjourned at 1757.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE AMENDMENT ACT, 1989

COURT REFORM STATUTE LAW AMENDMENT ACT, 1989

TUESDAY 4 JULY 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitution:

Cordiano, Joseph (Lawrence L) for Mr Polsinelli

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

Beecroft, Doug, Counsel, Policy Development Division

Perkins, Craig, Director, Court Reform Task Force

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 4 July 1989

The committee met at 1545 in room 228.

COURTS OF JUSTICE AMENDMENT ACT, 1989

COURT REFORM STATUTE LAW AMENDMENT ACT, 1989

Consideration of Bill 2, An Act to amend the Courts of Justice Act, 1984, and Bill 3, An Act to amend certain Statutes of Ontario Consequent upon Amendments to the Courts of Justice Act, 1984.

The Chairman: I recognize a quorum. We have the parliamentary assistant, Steven Offer, with us. I am not sure what his riding is, but he is here to make a presentation to us.

Mr Offer: It is always a pleasure to get such a warm welcome from you and I see you are carrying on in a most consistent fashion.

I would like to indicate first the gentlemen sitting to my left and right. To my left is Craig Perkins, who is the director of the task force on court reform, and to my right is Doug Beecroft, who is counsel for the policy development division.

I have an opening statement that I would like to run through at this point in time, and then if there are any questions from members of the committee dealing with these very important, far-reaching bills, we would be more than happy to respond to them.

We have gone through the second reading statement already on these bills. I believe at that point in time we were pleased to have unanimous approval from all parties in the Legislature, because this is an important, a historic movement in terms of the reform of the court system. I, as well as the Ministry of the Attorney General and the Attorney General (Mr Scott), certainly look forward to the deliberations that will follow, together with the clause-by-clause and their eventual passage into law.

Bill 2 and Bill 3 before you today represent the first step towards the achievement of an efficient, effective, equitable and well-managed justice system in which the residents of this province can have confidence and pride. As you are aware, on 1 May the Attorney General announced this government's vision for structural reforms to Ontario's trial court system. To put things in perspective, the last major overhaul of the court system was in 1881, when the courts of law and equity were merged into the Supreme Court of Ontario.

I ask, as the committee proceeds to review the oral and written submissions it will receive through these hearings, that members keep in mind the words of Mr Justice Thomas Zuber who emphatically stated that the trial court system exists to serve the public by assuring the orderly and expeditious resolution of disputes. Indeed, there are thousand of residents in this vast province who rely on the courts to ensure that justice is served and to tackle their problems quickly and fairly at a local level.

There is no question, of course, that the needs of those who work within the system must also be considered in conjunction with any change in court structure. This is why, prior to considering options for trial court reform, the Ministry of the Attorney General arranged for an extensive and exhaustive consultative process with all parties concerned with the administration of justice.

In 1985 and 1986, Mr Scott travelled to almost every one of the 235 locations where courts sit in Ontario. He met informally with judges of the various courts, court officials and administrators and members of the public. Again in 1986, Mr Scott asked Mr Justice Zuber of the Ontario Court of Appeal to study our trial court system and to provide recommendations for a simpler, more convenient and expeditious justice system. The Zuber report, released in 1987, served as the focus for a subsequent series of consultations.

Last June the ministry, as part of the reform process, organized a national conference on access to civil justice that brought together lawyers, judges and members of the public from across Canada to review ways of making the trial court system more accessible to the average person.

Following the conference, officials of the Ministry of the Attorney General conducted yet an additional series of consultations beginning in the fall of 1988. These consultations focused on the issues of court structure and were held with individuals and groups whose work called for them to function within the structure of the courts.

As with other consultations, these sessions included judges from the various courts, representatives from a number of areas of law, members of the business community and a variety of representatives from public interest groups. Discussions were held in several locations across the province and people from all regions of the province participated.

As you can see, significant weight was placed upon the importance of wide-ranging, comprehensive consultation prior to proceeding with a review of structural options. In fact, the minister deemed this as crucial to ensure that our interest groups had opportunity to convey their views and opinions regarding the structure of the courts. Mr Scott indicated, in his 1 May statement to the Legislature, that we have indeed carefully examined virtually every major structural option presented to us.

There is no question that the legal community and general public alike see the reform of our courts as a long-awaited and fundamental step if our system is to function effectively now and into the next century.

1550

As you are aware, the ultimate goal of this court reform initiative is the creation of a single trial court with three informal divisions to encompass family law, civil law and criminal law. The need and simplicity of a unified court is clearly illustrated by the complexities, delays and distance created by our existing courts.

At present there are—we have on this committee a number of members of the bar who would be well aware of this system—eight different trial courts divided into roughly three hierarchical levels. Some judges are located in the regions of the province; others are centralized at Toronto. In some subject matter areas, the jurisdictions of the different courts overlap with the

result that litigants are faced with a choice of courts in which to bring their proceedings.

In other cases, such as family law, jurisdiction is fragmented between courts with the result that the resolution of a single dispute often requires two or more proceedings in two or more different courts. The existence of different levels in the hierarchy has unquestionably promoted the perception that some courts dispense higher quality justice than others.

If I might, I would like to refer to the bills before you. I intend in this discussion to focus on Bill 2, An Act to amend the Courts of Justice Act, 1984, as it contains the changes required to implement the first phase of trial court reform. Bill 3, An Act to amend certain Statutes of Ontario Consequent upon Amendments to the Courts of Justice Act, 1984—I understand that is not the short title of the bill—is mainly a companion bill to Bill 2.

In order to achieve a unified trial court, it is necessary to proceed with a two-phased approach to change. The first phase is introduced by bills 2 and 3.

There are three principal changes to be implemented in phase 1. The first is merger and regionalization of the courts. The second is the expansion of the jurisdiction of the small claims court. The third is the introduction of co-operative management of the system.

The first step to reaching a unified court structure is to merge the existing High Court, district court and surrogate courts into a new court called the Ontario Court of Justice (General Division). The merger of these three federally appointed courts will provide a substantial pool of judges with complete jurisdiction in every region of the province. This will mean a significant improvement of service provided to the thousands of litigants throughout Ontario, who in some cases must now wait for a judge of the proper jurisdiction to arrive before proceeding with their case. Ultimately, all of the jurisdiction of the Ontario Court (General Division), including motions, will be exercised by judges.

We must also bear in mind that the merger of the federally appointed trial courts is not new in Canada. Six other provinces have merged their courts and British Columbia has recently passed legislation to bring about merger in the near future.

The Chairman: Just a second. We will inquire whether the bells are for a quorum call or a vote. If it is a vote, we will have to do something. It may be a fire too, in which case we would all want to get out of here, I think.

Mr Offer: I understand a quorum bell is five minutes, so I think we should have the answer fairly rapidly.

The Chairman: It was a quorum call. Go ahead, Mr Offer. They actually rang them, I think, because Mr Hampton was leaving.

Mr Hampton: Good guess but I'm afraid you're wrong.

Mr Offer: As I was indicating, the merger of the federally appointed trial courts is not new in Canada. Six other provinces have merged their courts. British Columbia has recently passed legislation to bring about merger

in the near future, and Quebec has always had only one federally appointed trial court.

The criminal and family divisions of the current provincial court will continue as the Ontario Court of Justice (Provincial Division). Although members of a single division with a single Chief Judge, provincial judges will continue to be assigned to cases based on their interests and area of expertise.

All matters under the Young Offenders Act will eventually be transferred to judges who focus on family matters. This will help to ease the backlog in the existing provincial criminal courts and move these matters to judges who are already dealing with young offender cases for those under age 17.

Hand in hand with the merger of the courts is regionalization of the justice system and its resources. All judges would be assigned to a region in which they would reside and their normal trial sittings would extend across the region. The bill will establish a regionalized court system with the courts divided into eight regions by a regulation under the act. This regionalization parallels that announced by the Attorney General last December for the courts administration division of the ministry and the crown attorneys system.

Each region will have a regional senior judge of the General Division and a regional senior judge of the Provincial Division. They will be responsible for the effective management and use of the judicial resources within their regions. The legislation before you does not require any judges to physically relocate. Judges will be resident throughout the province and will continue to conduct proceedings in those locations they currently serve.

The two divisions of the new Ontario Court, the Provincial Division and the General Division, will each have a Chief Judge in addition to the eight regional senior judges in each. The chief, associate chief and senior judges of the existing provincial courts will retain their present titles and will have their salaries protected against any decrease. They will also be considered in the selection of a new chief and regional senior judges.

The chief and regional senior judges of the Ontario Court (Provincial Division) will hold that office for five years, at which time they will return to assume the responsibilities of an ordinary judge. We have asked the federal government to consider a similar policy for the chief and regional senior judges of the Ontario Court (General Division), but we are told that the federal government's constitutional advisers are of the view that section 99 of the Constitution Act precludes a term appointment for federally appointed chief and regional senior judges.

The second main feature of Bill 2, and I think of extreme significance to residents outside Metro Toronto, is a fivefold increase in the monetary jurisdiction of small claims court to \$5,000 on a province-wide basis. This reform initiative has received tremendous acclaim on many fronts. At present, as the chairman and members of the committee will know, the small claims limit is \$1,000 outside Metro and \$3,000 within Toronto.

The decision to set the ceiling for small claims at \$5,000 was reached after a detailed review of the comments received during the consultative process. Some of the groups and individuals consulted felt that the small claims jurisdiction should be higher; some recommended a \$15,000 ceiling. While these recommendations were given careful thought, it became quite

evident that such a significant increase would jeopardize the accessible and expeditious features of this court.

The purpose of a small claims court is to provide a forum where litigants can make or defend civil claims involving relatively small amounts of money quickly, simply and inexpensively. It is also intended that litigants be able to present their own cases without the need for professional legal representation.

However, in response to requests for simpler procedures for cases in excess of \$5,000, the Attorney General intends to ask the Ontario rules committee to consider devising new rules to expedite the hearing of cases up to \$15,000 in the General Division. The intent of this request is to provide citizens with speedy and streamlined decision-making for cases exceeding the small claims limit.

1600

The third major component of Bill 2 is the introduction of co-operative management of the system, the personnel and the resources assigned to it. Management of a court system is a difficult and complex undertaking that requires the co-operation of all those who work within it, including judges, administrators, crown attorneys and members of the bar. In our system, each of these has an independent role to play which cannot be controlled by the others.

It is expected that the regional senior judge in each area will work closely with the regional leaders of the courts administration program, crown attorney system and with members of the local bar to ensure that the system and its resources are operating as efficiently as possible.

With regard to the Court of Appeal, this reform initiative leaves the court intact with the exception that Bill 2 changes the act so that the number of judges in the Court of Appeal will be fixed by regulation rather than statute. The ministry is continuing to review issues and problems faced by this court through a series of consultations with appellate court members and representatives from the bar. Proposals regarding structure of the Court of Appeal will be presented some time in the future.

I would like to reinforce that one of the primary objectives of phase 1 is to begin to move the court system in a direction that demonstrates increased accessibility, speed and management. In addition, all residents of Ontario should be entitled to access the same quality of justice. Our multitiered court system has, among other things, given rise to the belief that some courts exist to serve the rich and some to serve the poor. Some courts are viewed as more important than others, with the resulting perception that those important courts hear only the top cases and that some matters are more worthy of judicial consideration than others. This impression has been reinforced by forms of address which are throwbacks to another era.

Bill 2 strives to ensure that there is seen to be one standard of justice by requiring all Ontario Court and Unified Family Court judges to be addressed as "Your Honour" and to carry the title of "Judge," subject to the right of former High Court judges to elect to be addressed according to the old practice. In addition, judges will also all wear a common form of gown similar in nature to the plain black robes worn by members of the Court of Appeal. We also intend to phase out masters and family law commissioners. Future motions will be dealt with by the judges themselves.

It is important to realize that as we move towards the unified trial court structure recognition will continue to be given to the varying interests and levels of experience among members of the judiciary. The assignment of specific judges to specific cases will continue to reside with the Chief Judge and regional senior judges who will, I am sure, continue to recognize those variances.

I would also like to take this opportunity to point out that we are bringing forth a number of amendments to Bill 2. The judges of the High Court have come forward to us with some concerns regarding certain elements of the bill. We have addressed those concerns with them directly and as a result are proposing certain amendments which have been discussed with them in advance, and we will be putting forward these types of housekeeping amendments as soon as they are conclusively drafted.

This completes my opening remarks. As I have indicated earlier, I have to my left Mr Perkins and to my right Mr Beecroft, who have been involved, as well as others, in this whole court reform initiative for many years. We hold ourselves open to respond to any inquiries or questions which you, Mr Chairman, or members of the committee may have.

Mr Sterling: You mentioned that the amendments are housekeeping. I assume, then, that you do not take into consideration the very serious concern the Supreme Court judges have brought to the Attorney General's attention, that they very much doubt the constitutional validity of this piece of legislation. You are not talking about amendments to meet that particular problem, are you?

Mr Offer: First, I would like to make it very clear that we very much believe that current legislation before this committee—Bill 2 and Bill 3, but primarily Bill 2, obviously—is constitutional. We have had some concerns raised with respect to some constitutional questions and we are aware of those. I would ask Mr Beecroft if he might wish to build upon that question about amendments.

Mr Sterling: Perhaps I could just ask a question before Mr Beecroft talks about the amendments.

If the constitutionality of a piece of legislation like this is challenged and the challenge is successful, it would not only upset the situation with regard to an existing case in front of the courts but would basically throw the courts into turmoil at that time. That is why I think it is very important that we have this issue brought to the fore early on in the proceedings, so we can be certain. While the Attorney General might think or believe that this bill is constitutionally valid, apparently the Supreme Court justices of our own courts have a different opinion.

Mr Offer: One of the things one has to keep in mind is that this type of merger has gone on in six other provinces, and recently in British Columbia. The concern you have raised in terms of turmoil and what not is one which other provinces are involved in—

Mr Sterling: There are differences, with respect.

Mr Offer: There are six other provinces plus another that have gone through the merger process.

Mr Sterling: Not the same as this, Mr Offer.

Mr Offer: One of the concerns brought forward about the small claims court is one which would be the subject of an amendment in terms of wording, so that the wording in terms of the small claims court now being a branch of the Ontario Court (General Division) would very much follow the wording of, for instance, the Divisional Court. We feel that would come to grips with the concerns raised.

Mr Sterling: When will we get these amendments?

Mr Offer: One of the things I would like to indicate is that we are now working on the amendments. As you know, Mr Sterling, as has been my practice in the past, as soon as the amendments are finally determined, we will provide those amendments to you for your information. That has always been my experience in the past, to share amendments with the members of the opposition and members of the committee in general as soon as they are available. All I can say is that they are currently being working upon, and as soon as they are in their final form, I would, as I have in the past, share them with you.

Perhaps Mr Beecroft would like to carry on with a further examination of that particular issue.

The Chairman: I forgot what we were asking Mr Beecroft about, there has been so much discussion.

Mr Offer: The question is indelibly etched in my mind.

The Chairman: Please help us. What is it?

Mr Sterling: The question is: Is this bill constitutionally valid or not?

The Chairman: I think Mr Offer has indicated that there are six other—Have any of those jurisdictions ever had a reference?

Mr Beecroft: No.

The Chairman: If that is the question you are going to address, Mr Beecroft, perhaps you would like to address it.

Mr Sterling: Mr Chairman, you might unintentionally mislead this committee into thinking that this legislation is the same as the legislation in the other six provinces. That is not the case.

The Chairman: No, I did not. All I did was ask if there had ever been a reference. In other words, have they ever taken any of the other legislation before a court to determine its constitutionality?

Mr Sterling: But you are comparing apples and oranges here, I am afraid.

The Chairman: Mr Beecroft, perhaps you would separate the apples and the oranges.

Mr Beecroft: There are differences between this legislation and the legislation in the other provinces. There are also major similarities in substance. A merger of the Supreme Court and the district court has taken place in six other provinces. The wording that has been used has been slightly different, but the substance in the change has been identical.

There has never been a reference in any other province; to the best of my knowledge, there has never even been a challenge. Of course, it is open to any litigant to raise a challenge any time he wants. We are not aware of any serious difficulties. We have considered some amendments to remove any possible arguments, but we are satisfied that the legislation is constitutional.

1610

The Small Claims Court issue is perhaps the major issue. The concern that has been expressed is that the way the bill is drafted, provincially appointed people become members of a branch of the superior court; constitutionally, only federally appointed judges can be appointed to a superior court.

But that can be easily remedied. Provincially appointed masters now preside in the superior court and we can have a similar system where provincially appointed judges or deputy judges appointed pursuant to provincial authority could preside in the Small Claims Court.

The Chairman: Is a master not restricted to points of fact? He is not allowed to determine points of law.

Mr Beecroft: No. Masters do decide points of law.

The Chairman: I thought that was the distinction, how masters were able to be appointed by the province and get around the section 96 argument.

Mr Beecroft: No. Masters very frequently determine points of law, just as provincial judges every day of the week determine points of law. The test is whether the function they perform was a function that in 1867 had to be performed by a federally appointed judge. It tends to relate more to subject matter areas, for example, landlord and tenant evictions; the Supreme Court of Canada has told us that provincially appointed people cannot make landlord and tenant eviction orders. But provincially appointed judges and masters decide questions of law all the time, they issue final orders all the time, but they do so within a scope and a range that is restricted to provincially appointed persons.

Small claims, because of the low monetary limit, is an area that constitutionally can be given to provincially appointed persons. The difficulty that is raised with the way the bill is drafted is that it suggests that those provincially appointed persons are actually the judges of the superior court, which is not the intention. It is just to indicate that they are performing functions within the superior court in the same way that masters do.

Mr Sterling: This is a problem here. This is a pretty important piece of legislation. My feeling is that we should really suspend our hearings until we have the amendments that are going to be put forward by the Attorney General so we know what we are discussing.

I have received copies of correspondence from Ian Binnie of McCarthy and McCarthy, who has been retained by our Supreme Court justices, who wrote to the Attorney General on 9 June. I am sorry the Attorney General has not shared that particular correspondence with us. I have given the clerk a copy of that legislation, which I am going to ask him to distribute along with Mr Binnie's correspondence to the Minister of Justice of Canada, the Honourable Doug Lewis.

While it may stall our hearings on this bill, I think it is important that we have in front of us exactly what the government's intentions really are in pulling this off, because if in fact there is a substantial constitutional argument that can be put forward and call it into question, then all of the other work we might undertake goes for naught.

Mr Binnie, as you know, was a former Deputy Minister of Justice for Canada and I would assume has substantial credibility in his opinions.

We are going to be talking about this bill in a vacuum. Therefore, I think there might be some logic to putting this off until we get the amendments from the Attorney General.

Mr Offer: In response to Mr Sterling's concern, he will be well aware, having a great deal of legislative experience, that in dealing with any legislation, during the course of that legislation, based on opposition comments or comments by the general public, there is always the possibility of amendments coming forward.

In my understanding, in terms of this particular piece of legislation, we are dealing with the briefing of the ministry today. The next time this committee sits—I stand to be corrected—would be next Monday and Tuesday, for public consultation of sorts. We would expect that during that period of time those amendments would be ready for members to see. It would not be that you would be looking at this legislation, as you said, in a vacuum, but rather as soon as the amendments are completed.

This is important legislation. I agree with you in that respect, that it is an important piece of legislation. We are dealing with a fundamental change to the court system in this province. We indicated at the outset that there will be amendments; I think we gave you notice of that a little earlier. Certainly, we expect and intend to share those amendments as soon as they are drafted in a way which is agreeable, but I do not see, in terms of dealing with any piece of legislation, that it should be put on hold or stayed pending those amendments. We are going to be sharing them with you. We expect to have them if not at the end of this week, then at the beginning of next, during our public consultative process. I say that just as a matter of response to your concerns.

Mr Sterling: That is fine and dandy, but in the opening remarks of the parliamentary assistant, he indicated to us that the amendments were of a housekeeping nature only. If they are amendments which are basically going to make this bill constitutionally valid, then I no longer call them housekeeping amendments as such; I call them very important amendments.

If they are going to move the bill from a position where there is an opinion that the bill is not constitutionally valid by somebody who is very credible at the bar, then the people who may come in front of us may be giving public representations on entirely different legislation than is going to be proposed by the government.

I cannot judge whether these amendments are going to be major, minor or whatever, but I assume they are going to be pretty major if you are going to meet the constitutional argument.

I think the very first witness we might want to have would be Mr Binnie himself, after he has received a copy of these amendments, so that we can deal with that issue at the very front.

The Chairman: I got the impression that what page 14 meant was that there would be certain amendments as a result of concerns raised by the High Court, and in addition to that Mr Offer would be putting forward a number of housekeeping amendments at this time as well. Is that right? Is that what you were doing? Am I reading page 14 correctly that there are some major amendments as a result of the concerns of the judges of the High Court, and that there are also some minor housekeeping amendments?

Mr Offer: No. The amendments which we intend to bring forward are of a housekeeping nature. We believe that a rewording of some of the existing sections specifically dealing with Small Claims Court, to bring it more in line with those sections dealing with the Divisional Court—I think it is section 17 of the legislation—would come to grips with some of the concerns; but basically the intent of the legislation remains the same and the position of the ministry remains the same, that these particular pieces of legislation are constitutionally valid.

1620

The Chairman: I will test the water. Is there unanimous consent that the point Mr Sterling has made, namely, that we suspend these hearings until the constitutionality of the legislation before this committee is decided, is agreed to? If not—

Mr Kanter: No. There is not.

The Chairman: All right. Mr Sterling, if you wish to proceed with that motion, I would like you to put it on the floor in a proper notice and then we can debate it, but there is not unanimous consent, so it will have to be done in that fashion and voted on.

Mr Sterling: I move that the standing committee on administration of justice cease hearings on Bills 2 and 3 until we have received the amendments from the Attorney General regarding these bills.

The Chairman: I am not sure if it is the standing orders but maybe it is the interpretation of standing orders, that persons submitting amendments have up until two hours before the sitting to furnish them to the other side? Or have I just made up a new rule?

Interjection.

The Chairman: All right. I understand that the section I am thinking of is "where time permits." The time it will be given is as soon as possible or within an hour. Well, that is the motion that is on the floor. Are there any other members who wish to speak to it. I have Mr Chiarelli. I do not know whether you wanted to speak to that issue,

Mr Chiarelli: No.

The Chairman: Okay. Mr Kanter on that issue.

Mr Kanter: Thank you. I will not be supporting the motion by Mr Sterling. I think it would be highly unusual and not terribly constructive in terms of the business of this committee.

As I understand it, the usual course for these committees concerning legislation is to divide our work into two parts, the first of which is to

hear deputations from the public in either presentation form, deputation form or in letters and communications. Quite frankly, I appreciate the several communications that Mr Sterling put before us from Mr Binnie, I believe it is, who is representing a party with an interest in this legislation.

But it seems to me that this is the stage—and this is a stage that has been agreed to by the all-party subcommittee—to consider the basic thrust of this legislation. Given the fact that we have this information before us, given the fact that some of the deputants, the Advocates' Society for example, may well have some major philosophical concerns with the thrust of the legislation, I think this is the time to consider the philosophical thrust and indeed the constitutionality of the philosophical thrust of the legislation.

It has been my experience that it is following that point, after we consider the views of the public, after we consider the basic philosophical orientation, thrust and direction of the legislation, that we then consider the bill on a clause-by-clause basis, including, of course, amendments put by any party, be they government amendments, housekeeping amendments, changes of direction moved by the government or indeed the opposition. I think that the thrust of Mr Sterling's motion would be to reverse and certainly to confuse the usual and very effective, I think, way of proceeding in this committee.

One other point and certainly not the only point: We could, of course, change our procedure, but we have advertised in several large daily newspapers the fact that we will be hearing public deputations next Monday and Tuesday. I understand that we have had some response. I think it would be improper to refuse to hear those people at that time, particularly since we, in effect, have solicited their views and they have come forward.

Judging from our schedule, it might even be possible to hear from additional people next week, next Monday and Tuesday. For those several reasons, I urge members of the committee not to support the motion put by Mr Sterling.

The Chairman: Any further speakers on Mr Sterling's motion? Mr Kormos and then Mr Hampton.

Mr Kormos: I looked at page 14 as well, so I am surprised to have Mr Offer tell us that the amendments do not address the concerns about constitutionality. I am reading it again and I am sure that is what it said.

Mr Kanter talks about having people come here and make comments and submissions. Part of the process that he talks about is an opportunity to question these people, not just as to the bill in its printed form now, but as to those amendments and the impact that they will have. It is just incredible. This ministry in particular seems to really enjoy tangling with judges in the province at all levels, regardless of whether they are provincially or federally appointed.

They have correspondence, which we have been provided with, where they indicate that there are serious concerns about the constitutional validity of the bill. Again, you talk about the right course of action. Talk about putting the cart before the horse. It seems to me that to embark on some sort of vague consideration of Bill 2 without knowing what the amendments are is really putting the cart before the horse, especially when—these are not pikers. We are talking about the Supreme Court of Ontario telling these people—

Mr Hampton: Pikers or punkers?

Mr Kormos: No, not punkers. They were in Minden or wherever it was, but these guys certainly are not pikers. They are telling the Attorney General that this legislation may not fly constitutionally. Who more does he have to hear from in that regard? Why does he not listen to that?

Why does he persist in disregarding the advice that he has received to date and basically adopting an "I know better than any of you guys" attitude. The way it is now, he will probably never get a federal appointment, but why does he persist in doing that, Mr Chairman? Why does he not accept the learned advice that he has got free, so far, and carry on in an appropriate way?

Mr Sterling's motion is entirely in order because, considering what has been raised, considering that there are going to be people appearing here—talk about delaying it, you are delaying it when you have to have these same people back so they can address their comments to the legislation once again, as amended, as compared to the legislation as it stands and indeed whether any of the amendments address the constitutional validity of it.

It is just incredible to me that the government would want to waste so much time in ramming this through, knowing that it can because of mere numbers, when it is going to be back to the drawing board at some point anyway. The responsible thing to do is to address the problems now and address the issues that have been raised now, not to confront the judges and tell them that their advice is not worth the paper it is written on and be confronted with the reality of things later on down the road. The reality of it is, as Mr Binnie indicates in one of his letters, the lengthy delays that are going to be involved in initial litigation, when those litigants raise constitutional questions about the validity of the forum that their matter is being heard in.

It seems that there is no reason why the amendments should not be on the table before us right now, in any event. I cannot understand. If indeed they are only housekeeping amendments, then why are they not here? If they are more profound than housekeeping and that is the reason for the delay in preparing them, then the Attorney General's office is conceding that there are some constitutional problems with the legislation. You can't have it both ways; you can't suck and blow. That is what the Attorney General is doing.

The motion at this point is a sound one. It is certainly going to have my support.

1630

Mr Hampton: I have had an opportunity to briefly examine the letters from Mr Binnie, first to the federal Minister of Justice and second to the Attorney General. It seemed to me that the issues that are raised there are pretty substantial in the sense that we are talking about judicial independence, we are talking about an encroachment on federal authority, we are talking about the jurisdiction of the province to remove superior court judges, we are talking about the inherent jurisdiction of superior court judges and so on.

I think it is fair to say that we all agree with the general thrust of this legislation. I do not think that is under debate here. From the comments that were made in the Legislature when this legislation was introduced, it is pretty clear that both opposition parties favour court reform, so the general thrust of the legislation is not under debate.

I think the question we are dealing with here is almost like a

preliminary constitutional question in a case before a court. Why spend two days, three days, four days going through the legislation which exists now when the parliamentary assistant has already indicated that the judges of the High Court have come forward to us with concerns regarding certain elements of the bill?

We know what those concerns are now. They are fairly substantive issues. They are issues of a constitutional concern. Why we would want to go on at this point without seeing those very meaty amendments, those amendments which may in themselves require quite a bit of study? Why we would want to spend a couple of days dealing with the legislation which is here now and then spend a couple of days later on dealing with those amendments?

If they address the concerns of the judges—and from the statement on page 14, I would assume that they should or they are supposed to; I quote the statement, "We have addressed these concerns with them directly and, as a result, are proposing certain amendments"—if those amendments are going to address these constitutional concerns and these other very weighty concerns raised by the judges, I really see little purpose in going ahead now.

To save time, since we all agree on the thrust of the legislation, I would think the government would want to present the amendments, let us have a look at them and then bring forward whoever you want to bring forward to make the case that they are constitutionally valid or that they meet the judges' concerns, and let's do it then.

If we proceed now with the legislation we have now and then have the amendments next week or the week after and then have to review those amendments, I think we are simply doubling our work and doubling the amount of time we have to spend here, and not to any good or productive purpose. Let's deal with the legislation when it is presented and when it deals with the concerns that have already been raised.

Mr Kanter: Mr Hampton has raised an interesting idea when he referred to the constitutional question as a preliminary one. I do not disagree with him on that, but I think we should not forget the purpose of today's session. It is a briefing. We have experts here. We have staff here who I presume are familiar with the kinds of issues raised in Mr Binnie's letters to both Mr Scott and Mr Lewis. I think that this is the ideal opportunity today to discuss these issues, which are in fact preliminary ones.

Mr Hampton and other members of the committee are perfectly free to raise constitutional questions of their own. They can adopt some of the questions raised in the two letters before us. I think they are appropriate questions. I am not suggesting for a moment that they are not appropriate questions, I am suggesting that we have an appropriate forum here today and we have the appropriate personnel here today.

In my opposition to Mr Sterling's motion, I am not suggesting that these questions not be raised. Rather I am suggesting that the appropriate time to raise them would be now, here, today.

Mr Sterling: It is almost too important to be partisan in terms of the impact of the bill on the lives of people in Ontario. I do not have any intention of being partisan with my motion. I just think it is the logical way to proceed. I think the best thing a government can do is get as much of what it intends to do on the table as possible so no one is misled intentionally or unintentionally as to what it is doing.

If they go ahead with the presentation today, do I ask questions about constitutionality as we go through it, because I do not know whether or not they have dealt with a particular problem which has been raised by Mr Binnie?

I do not know how much longer we can discuss this, Mr Chairman. We are going to waste time on either side, so I suggest you put the question.

The Chairman: All those in favour of Mr Sterling's motion? Those opposed?

Motion negatived.

The Chairman: Perhaps we can proceed with that question being addressed by Mr Beecroft, although I think he has already done that. Are there any questions by any of the other members?

Mr Chiarelli: I have some questions in two areas. One has to do with the phasing out of the masters and the other with the Small Claims Court limits. Is it the intention that all of the functions now performed by the masters would be relegated to the judges? The opening remarks indicate that there is an intention to phase out masters. Then the next sentence limits its comment to, "Future motions will be dealt with by the judges themselves." Is it the intention that all of the functions now performed by masters would be performed by judges?

Mr Offer: Yes, the short answer to your question is that the matters currently done by masters would be done by judges. It is important to realize that in most areas throughout the province, these matters are now being done by judges. There are only, I believe, 15 masters in this province; most are located in the city of Toronto. But in most of the areas throughout the province, these matters are now being heard by judges. It is the intent that all the matters would be looked after by the judges.

I am informed by Mr Perkins that of the 15 masters in the province, 12 are in Toronto, one in Ottawa, one in London and one in Windsor.

Mr Chiarelli: My understanding of the responsibilities of the masters is, in some respects, that they are now doing things—for lack of better wording—of lesser importance. They are doing arithmetic calculations in terms of assessments of damages; they are doing assessments of legal accounts. Some of them are small amounts.

Is it significant that some of these smaller or unimportant matters are now going to be performed by judges themselves? Administratively, does it not make sense to have some type of administrative official or semijudicial official, such as a master, perform some of these many minor tasks that are presently being done by masters in the urban areas such as Ottawa or Toronto?

1640

Mr Offer: That is one of the essential questions that has to be responded to in terms of the function of the master. The whole thrust is to move away from this office of master; that in many areas throughout the province, the matters and decisions and determinations are now being done by judges. It opens up a whole new potential for court case management. We think the decision in terms of the masters is one which leans towards effective management, accessibility and a co-operative type of venture.

I realize the question you are asking, but in terms of the decision, we feel those particular matters can be and are looked after in the main by judges, and we want to make it as consistent as we can across the province.

Mr Chiarelli: My understanding of the masters' responsibilities is that if you take Metropolitan Toronto or Ottawa, there is a tremendous number of things they do. My understanding is that they do them to take them out of the hands of the judges, who have more important things to do. It would appear to me that sometimes we are loading the judges up with matters which are not that significant.

If I can give you an example, let's assume that someone at present has a legal account he wants to have assessed. That would go to a master. No? Where would it go at present?

Mr Offer: That would probably be handled by an assessment officer and not a master. Mr Perkins would like to respond to your question.

Mr Perkins: There are three primary functions the masters perform today. Mr Chiarelli has identified one of them as the assessment of costs or lawyers' bills. Those are actually done by the masters in their capacity as assessment officers rather than as masters.

We anticipate we will keep the assessment officer function in the system and that certain individuals will be assigned specifically to do that work. Where there are no masters, the assessment officer, generally speaking, is the local registrar. All the local registrars are ex officio assessment officers. They will continue to do that work, as will, of course, the incumbent masters we have today. As those masters disappear over time, we will look at the workload and, if necessary, appoint further assessment officers to handle that workload.

The second function masters do is references. You mentioned assessment of damages. There are many other situations where they take accounts, supervise the conduct of the sale and such things. In the district court today, where of course there are no masters at all, either the judge does the reference or else it is referred to the local registrar. Again, we would anticipate that the local registrar or an officer within the court system would conduct the taking of accounts, the conduct of the sale and matters like that.

However, where the matter is really a judicial one, such as the assessment of damages, we expect that the judges themselves would do it. For example, in construction lien actions outside Toronto, the local judges do it.

The motions, which are probably the majority of the masters' work, would be done, as time passes and as the masters are phased out, by the judges. Mr Offer has pointed out that the judges in 45 of the 49 county towns do all of the motions.

You might be interested in knowing that in the other provinces in Canada there are no masters hearing motions, except in Alberta, where they have two—one in Calgary, one in Edmonton—and in British Columbia, where they have one in Victoria, not in Vancouver where the business is. The institution has not developed to date in the rest of the country. In the rest of the country, the judicial functions which we have performed here by masters are all done by judges.

Mr Chiarelli: In some cases, everything a master is doing now in Ontario is also done by somebody else: an assessment officer, a registrar or a judge.

Mr Perkins: Yes.

Mr Chiarelli: In that sense, there is a lot of duplication.

Mr Perkins: Yes, there is. The local practice varies tremendously in what the master is used for; for example, between Windsor, London and Ottawa, they do different things there. There is just a local practice that has grown, but everywhere there is the capacity to do the work, by other officers or judges.

Mr Chiarelli: I have a question in another area, with the limit of the small claims court. I know there are a number of senior litigation practitioners in the Ottawa area, from whence I come, who have expressed to me and in fact to the Attorney General on a couple of occasions that they are of the opinion that the \$5,000 limit is too low.

One of the reasons, among others, is that when you look at a trial for a day or two in district court or what have you for a matter that could be \$6,000, \$8,000, \$10,000 or \$12,000, when you total up the cost of counsel and other costs, etc, it can far exceed the amount of the claim. In fact, in the opinion of some counsel in the Ottawa area, claims of that range—from \$5,000 to \$12,000 or \$15,000—in many cases are utilizing a lot of judges' time and a lot of court time.

What are the policy considerations—I am addressing it to any or all of them—that went into determining the amount at \$5,000 rather than \$8,000, \$10,000, \$12,000 or \$15,000, as has been suggested?

The Chairman: I take it that is directed to Mr Offer and not to the other two gentlemen.

Mr Offer: I will try to respond, in any case, because I think the point you raise is very important. We know that the small claims court is very much a people's court; it is there to attempt to deal with matters expeditiously and inexpensively, where people can come and argue their cases, where matters can be resolved. Those are some of the policy questions, because one has to ask: If you increase the monetary limit from, let us say, \$5,000 to \$15,000, is there a point in time where you move away from the small claims court being that people's court, that expeditious, inexpensive way in which to resolve disputes?

We have in this particular legislation said that we believe the small claims court limit ought to be increased and it ought to be increased uniformly across the province. No longer should there be a distinction between a limit in Toronto of \$3,000 and of \$1,000 outside of Toronto, but it should be \$5,000 across the province. This will promote and continue to keep the small claims court as a people's court where matters can be expeditiously and inexpensively resolved.

But we have also come to grips with the fact that this has to be continually reviewed. That is why, in this legislation, the monetary limit is set by regulation; so there will be an ongoing review, in keeping with the economy of this province, of the dollar amounts and things of this nature—whether it can be increased, whether it ought to be increased—and it

could be done by regulation. There will be an ongoing monitoring process to see whether, notwithstanding the initial decision of \$5,000, this could even be raised in the future; but also in keeping with the purpose for which the small claims court was devised, as a people's court, a court where disputes are expeditiously and in many ways inexpensively resolved.

We have come to grips with those points you have raised, but we feel that in keeping with the fundamental purpose for which there is a small claims court, \$5,000 is the preferable level at this time, but also knowing that this will be monitored on an ongoing basis. It is, for most of the province, a fivefold increase, obviously. We think that is going to be an important advantage to business groups and many people across the province, by which their disputes can be resolved.

1650

Mr Chiarelli: If we take a hypothetical amount of \$7,500, what are the factors of having a \$7,500 limit as opposed to \$5,000 which would take this out of the realm of a people's court? My question basically is: How arbitrary is the \$5,000?

Mr Offer: How high is up and how deep is down? To respond to that, things are ongoing. What are dollar amounts? What is \$5,000 today as opposed to \$5,000 in 1995? The answer to your question is that it cannot be done with any certainty, save for the fact that it is the responsibility of the government and of the Ministry of the Attorney General in particular to say, "Yes, we're going to make this an across-the-board amount, but we're also always going to monitor to see whether there is any potential increase in that amount which will keep it in this type of people's court, expeditious and inexpensive way to resolve disputes." As in all cases, you just have to have an ongoing monitoring.

On the other hand, in terms of civil actions, we are reviewing rules from \$5,000 to \$15,000 to try to make that a little more expeditious in terms of the rules of procedure.

The answer to your question does not lend itself to specificity in response, because of the fact that it is an ongoing matter. It depends on the economy and on what matters are required to be determined to make certain that the court still maintains its people's court atmosphere. All we can do is say that with regulation at least we have the opportunity to continually monitor.

Mr Chiarelli: I assume that in the consultative process there was an overwhelming consensus to increase the limit. There was not? I am not talking to \$5,000, just generally to increase it.

Mr Offer: Absolutely. A large number said it ought to be increased from \$1,000 to \$5,000.

Mr Chiarelli: But I assume there was no consensus in terms of a range of increase, or was there? From talking to counsel in the Ottawa area, I sense that there is a general feeling that the limit should be higher. I wonder if, in the consultative process, you have been able to discern whether across the province there was a feeling that it should be higher than \$5,000.

Mr Offer: During the consultative process, if there was a consensus, it was that \$5,000 at this time is an important step.

The Chairman: Could I ask a few questions? I want to go back to the understanding I had of how you distinguish between a section 96 judge and any other than that. A judge makes a final determination of a lis between two parties, whereas a master may determine a point of law even in finality in the course of a trial, but does not determine the actual result of the lis between the two parties. Is that accurate?

Mr Beecroft: With respect, I do not think it is quite accurate. Masters do make final orders; they do have that power.

The Chairman: Except in very extreme cases where there has been no defence entered or in the case of a summary judgement; but masters do not make a final determination between two parties per se.

Mr Beecroft: Masters do have the authority, on a motion, to dispose of a case, on the basis that it does not disclose a cause of action or for various other reasons. They can finally determine a lis between parties.

The Chairman: But what they are really determining is that there never was a lis between the parties, because it is not a cause of action. I do not want to get too esoteric, but I want to know whether I am right.

Mr Perkins: May I try to help you? I agree with you that judges finally determine a lis, but I think the crucial distinction is that they determine it on the merits. In other words, they will weigh the evidence and determine credibility and matters of that sort. A master can determine a case finally, but not on the merits. He can say there is no merit in a case, in which case a master can grant summary judgement or strike out a statement of claim as having no merit; but it would not be competent for a master to, say, hear a trial and make an adjudication on a trial. It is not the finality alone that determines the section 96 issue. It has to be finality on the merits of the case.

The Chairman: All right. The original small claims court, which was known as the Divisional Court, was presided over by federally appointed judges.

Mr Perkins: Yes.

The Chairman: Somewhere along the line came into being the Provincial Courts Act which appointed provincial court judges of civil jurisdiction, who then presided over a newly named court called the Small Claims Court. Was that legislation ever challenged by anyone?

Mr Beecroft: Not in Ontario, to the best of my knowledge. But in Quebec, where they have a provincially appointed small claims court, it has been challenged. I believe it has been upheld as far as \$5,000.

The Chairman: Upheld as being constitutionally valid?

Mr Beecroft: Yes. What the court has essentially said is that in the superior court a master cannot finally dispose of a lis on the merits. In other words, with respect to superior court jurisdiction, a master acting within the superior court cannot do that. But provincial court judges acting within legitimate provincial court jurisdiction can finally dispose of a lis on the merits, and of course they do that all the time.

Small claims court jurisdiction, at least as far as \$5,000, which is as far as it has been considered judicially—it is the Quebec case I am referring

to—is a provincial court function, so it can be given to anyone. It can be given either to provincially appointed persons or federally appointed persons, because it is not a function that in 1867 was guaranteed or reserved for federally appointed persons.

The Chairman: So the issue in 1867 is really the nub of where the line between provincial and federal powers —

Mr Beecroft: That is right. You always have to go back to that legal history, to what the law was in 1867.

Mr Perkins: And we always have had a small claims court of sorts in Ontario, really going all the way back to 1791. At the time of Confederation, they were not presided over exclusively by superior court judges.

The Chairman: Is that the reason why phase 2 of this whole exercise requires federal agreement and involvement? Because you are taking certain judges that are not now within the category of section 96 judges and you are elevating them, in a sense, to---

Mr Offer: Basically, in the second phase there would be a single trial court system whereby all the judges would have the jurisdiction to deal with all of the cases. Of course, because of that and because of the current distinction between section 96 and non-section-96 judges, there would have to be some sort of agreement or constitutional amendment determined so that the unified system could in fact take place.

The Chairman: So the answer is yes.

Mr Beecroft: Phase 2 could be accomplished without constitutional amendment. It would require the federal government to appoint all of the judges of the single trial court, because it is a superior court. The other alternative would be to make some agreement with respect to how the appointment process would work and either follow that informally or put that in the Constitution. Phase 2 can be accomplished within the existing Constitution. It would require federal legislative amendments, just as phase 1 requires federal legislative amendments.

The Chairman: Any further questions? No? Thank you very much. That was all we had scheduled for today. We stand adjourned until after routine proceedings on Monday.

The committee adjourned at 1701.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
COURTS OF JUSTICE AMENDMENT ACT, 1989
MONDAY 10 JULY 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitution:

Keyes, Kenneth A. (Kingston and The Islands L) for Mr Chiarelli

Clerk: Arnott, Douglas

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Baar, Carl, Professor of Politics, Brock University

From the County and District Law Presidents' Association:

Mossip, Nancy M., Chair

From the Ministry of the Attorney General:

Perkins, Craig, Director, Court Reform Task Force

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 10 July 1989

The committee met at 1647 in room 228.

COURTS OF JUSTICE AMENDMENT ACT, 1989

Consideration of Bill 2, An Act to amend the Courts of Justice Act, 1984.

The Chairman: I recognize a quorum, or almost. We have before us Professor Carl Baar. If you would like to come forward, we would be happy to hear from you.

CARL BAAR

Mr Baar: I appreciate the opportunity to come before you today for these historic hearings. Bill 2 is the most important piece of court legislation in Ontario in our lifetime, but it could turn out to be counterproductive for the furtherance of the stated goals of the Attorney General (Mr Scott).

My purpose today is twofold: first, to make the committee aware of the need to make perfecting amendments to Bill 2, and second, to make committee members aware of further steps they should expect in the future and should hold the minister to account for if these steps are not taken.

The principle of court integration is an important one that I have long supported. Simplification and unification of court structure frequently contribute to that goal of court integration, yet all of these objectives are only a means to the end of providing expeditious and accessible justice.

Reorganization can facilitate the achievement of justice goals, but it can also interfere with them. The courts are currently dealing with a reorganization proposal not unlike one that another public servant described as follows:

"It seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn late in life that we tend to meet any new situation by reorganizing, and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralization."

That particular statement was made by Petronius, arbiter, around 66 AD.

How does Bill 2 stack up as a court reorganization measure? By eliminating a third court level and consolidating the criminal and family courts into a single provincial division or level, the Legislature moves towards the more complete structural unification that has already occurred in every other province in Canada except Nova Scotia.

In fact, we are moving further, to the direction recommended by the American Bar Association in its 1974 standards, a one-level trial court. The American Bar Association has just released a revised draft of those 1974 standards that leaves intact the proposal for a one-level trial court.

The American situation is ironic because the state which has had a one-level trial court for the longest period of time, excluding states with small population and geographic area, is the state of Illinois, and the unified trial court in Chicago has the worst delays of any urban trial court in the United States.

The way to make court reorganization and structural unification work is to ensure that it is accompanied by administrative steps that ensure its effective operation. Fortunately, a wide range of administrative reforms are currently being implemented by the Ministry of the Attorney General with these structural reforms in mind. Unfortunately, the friction and controversy surrounding the current legislation may militate against effective implementation of the overall package.

Why has conflict emerged? In one respect, it could be expected when a historically important institution like the High Court of Justice will effectively disappear into a much larger and more dispersed body.

In another respect, however, conflict has been exacerbated by the way in which the Attorney General has chosen to put forward the legislation. The secrecy surrounding Bill 2 throughout the fall and winter was quite impressive and it was also quite unnecessary. In contrast, the Attorney General of British Columbia decided in February to reject the interim findings of his Hughes report, dubbed a mini-Zuber commission in British Columbia, and opt for merger of the supreme and county courts. A bill was drafted that was circulated among the judges of both courts before it was introduced in the Legislature. Numerous amendments were proposed. Many were accepted, others were modified or rejected. By the time the legislation was tabled in the second week of May, the two courts had already established a joint implementation committee, even though many BC judges shared the deep misgivings of their Ontario colleagues about the changes this merger might produce.

In Ontario, we are still some steps behind. I do not believe that rushing the bill through committee will contribute to the effective implementation of this legislation. Working through additional amendments and concerns will, I believe. The large sheaf of government motions currently before you is evidence that we are now where British Columbia was over two months ago and we still have a lot of cleaning up to do.

Consider one change in Bill 2 that I believe is essential and will not in any way affect the principle of the legislation. One of the things done by this bill is that it will amend subsection 3(2) of the Courts of Justice Act to allow the number of judges on the Court of Appeal to be set by regulation. This appears to be a simple amendment that promotes flexibility and administrative responsiveness. In fact, it is wrongheaded and should be defeated.

At the time I was working with Quebec Superior Court Justice Jules Deschênes on his 1981 report on court administration, only one province, Saskatchewan, had a similar provision. Two years later, when the Devine government came to power, it created a constitutional crisis in the province by abolishing Court of Appeal judgeships by order in council as soon as they became vacant. It was clearly part of a political struggle over appointments between the federal and provincial governments and was magically resolved after the 1984 federal election. In the meantime, however, litigation ensued over the constitutionality of the province's action.

There is no good reason, given this experience, to enact a similar provision in Ontario. Bringing legislation before the House to alter judgeships will not produce undue delay and will ensure that proper relationships between government and judiciary are honoured.

I am, of course, not implying that what happened in Saskatchewan is contemplated here in Ontario. At the same time, however, given the Attorney General's stated concern about whether additional judgeships are needed in the other courts, some sense of unease among the judiciary would be understandable. I urge this committee then to amend subsection 3(2) and fix the number of Court of Appeal judgeships by statute.

I would suggest, and have discussed this as well, that you may, if you feel it is appropriate to enlarge the court and avoid the kind of conflict I described, authorize the increase of judges by order in council. But in either case I think it makes sense for something like this to come back before the Legislature, so that all of the work on it is not done simply by behind-the-scenes negotiation between the courts and government.

I am strongly opposed to passing the bill now and cleaning up sections like this later, especially since the Attorney General was made aware of this concern as early as 11 May by myself and Justice Deschênes. Ministry staff also had this matter brought to their attention a month ago.

In the last part of my remarks, let me refer back to the paradox that Bill 2 is both extremely important and potentially counterproductive. The key reason for this in Ontario is that the government's package, by putting off unification of family law jurisdiction to phase 2, is potentially undermining the one reorganization proposal that meets the two most important criteria for any change in court structure. First, it has widespread support, and second, it will have the greatest impact on the ability of the courts to serve the public.

The government strongly supports the unification of family law jurisdiction in theory, but the approach taken in the court reform package undermines the value of that support. By putting family court reform off until phase 2 and combining it with the unification of the criminal court—which I believe is a good idea in principle, but it is one around which there is strong opposition and it is a relatively new idea—I think the government is putting family law unification too far away in the future.

My preference is that family courts be unified immediately on an incremental basis, beginning in those counties where facilities and staffing make it most feasible. This will be a signal that the government supports meaningful court reform and that family law will not once again be shunted to the back of the bus. I urge members of this committee to monitor the government's effort on family court reform and ensure that reforms are carried out expeditiously.

I have other areas I could develop. I will just summarize them briefly, given the time. I think we should raise similar concerns about appellate court reform. You will recall that the Report of the Ontario Courts Inquiry, along with many others, has endorsed the creation of an intermediate appellate court in Ontario. On one hand, it is unfortunate that Ontario can no longer effectively deal with its appellate work in a single court, but the change appears sensible and inevitable under the circumstances. In fact, the merger contemplated in Bill 2 may increase the need for appellate court reform, because no longer will the judgements of 50 High Court justices sitting

individually bind the 150 district court judges. By reducing the amount of hierarchy at the trial court, the government is creating a situation whereby appellate court work could sharply increase. Here too, then, I urge the committee to monitor case load changes and ensure that our system of justice works effectively at a time of change.

When I was putting these remarks together, it really impressed me that there is a role for this committee because of the wide scope of change in court administration and in court structure. I think there are a large number of items that are stated to be on the agenda for the future that are, in some respects, more important than the items that are in this bill, and it is important not to lose touch with them.

There are current issues in the existing legislation, such as the handling of the current small claims court judges and the implementation of so-called co-operative management, which also require full consideration. Within the next couple of weeks, a long article that I had written critiquing the Zuber report will finally come out in the Windsor Yearbook on Access to Justice. Now that it has been overtaken by events—you know, in a way similar to most things that you wind up writing as a scholar, they get printed when it is too late—there is a critical review of the use of management committees in an article that I have written for that journal and one that has also been written by Professor Ian Greene of York University.

I think the notion we were trying to get at is that you need to have co-operation among the various elements in the court setting and that you have to organize on the basis of mutual adjustment and co-operation, but that the use of a formal management committee mechanism at a regional level, such as proposed in this bill, will actually produce more hierarchy and centralization than it will produce co-operation. The judges will always be suspicious about a committee that has a majority of nonjudges, but court officials will always be suspicious of a committee on which there are one or two judges who will exert their authority and put pressure on the nonjudge members.

You get in a situation kind of like a shotgun marriage, where everybody is unhappy, but there are ways in which you are going to be able to encourage the development of co-operative management, not so much at the regional level, but in the local courthouses in all the counties and districts in Ontario that I think will contribute to increased accessibility and increased expeditiousness of cases through the province.

I appreciate the chance to share these ideas with you. I know this is late in the day, but I am leaving for a couple of weeks tomorrow morning, so I especially appreciate being able to share these ideas with you and of course I welcome any questions you may have.

1700

Mr Kormos: I am interested in the problems you associated with this intermediate level of bureaucracy, one that very much seems to be the pattern or style that has been adopted in a whole number of areas in the criminal justice system.

You talked about the impressions that would be left with a lay-dominated committee and similar concerns that would be caused by a judge-dominated committee. One of the concerns that I have heard expressed is that when it is not a committee that is the intermediary but regional management type, the types of the people who are brought into that are, once again, management

types, people whose background might be in the Ministry of Housing and they know diddly squat about the real function of courtrooms, no matter how much they purport to know all about sound management principles.

For a person like myself who does not know a whole lot about those sorts of things, that has a ring of truth to me; that somebody whose background, albeit still full of management from the Ministry of Housing, probably knows diddly squat about courtrooms and administration of justice and indeed would tend to screw things up more than he would help things work. Can you comment on that?

Mr Baar: Okay. My sense, while the regional management structure was being developed and the eight regional managers were being appointed, was that the ideal would have been a mix of those management people and those court administration people, because I think courts have for too long resisted any management change. They have operated under what a colleague of mine refers to as the 27th law of organizations: Every organization thinks it is unique. As a result, a lot of courts have rejected some management ideas that are worth while.

At the same time, you cannot just kind of come in on your horse saying "I've got all these new ideas" and expect them to be implemented. What I would have preferred was for a number of those regional managers to have been people who had come up through the courts and had experience in an operating level, in registries or clerks' offices in the province. I think if you had had a mix, maybe three or four of those and three or four of the others, you would have seen some real progress, because what tends to happen in these regional management structures is that people spend a long time talking to one another, sharing ideas, finding out what is going on. They could have learned from one another.

Unfortunately, in fact only three of the six kind of supermanagers in the southern Ontario districts had any experience in court administration, and two out of those three had worked only in headquarters, one coming from the Ontario Municipal Board and one coming from the Management Board of Cabinet. Only one person had had court administrative experience, and it was only one year, as a registrar in a court.

I think it is unfortunate, not just because they do not have the expertise but because a message went out to a lot of administrators, who might have come in with less education and formal training but spent years working to build up their own knowledge and develop their professional skills, that they really were not wanted. This was a real problem that developed throughout the screening period and the hiring of those individuals. I think it has left a lot of bitterness and I think it is unfortunate.

Now, speaking not so much in personal terms but in management terms, the real problem you have with a regional management structure is that the people in the provincial headquarters think they are giving up a lot of authority to these regional managers, but so do the people at the operating level. So everybody is unhappy with it. They all feel as though they have lost out. They do not have the discretion they once had.

I assume that what would happen in practice—because this is what has happened in a lot of states in the United States, including Michigan and a few others that have used a structure like this—is that the regional managers, because they have less legitimacy and support, spend a good amount of their time out in the local courts asking the people there "How can I help you?" and

wind up, in a sense, becoming lobbyists for the local courts in the provincial headquarters. Hopefully, they will also be able to play some role in encouraging innovation, but I only hope they do not make too many mistakes because they have not been in a court before it is too late for them to be able to benefit the system.

Mr Kormos: You talked about Illinois and that jurisdiction not being able to rid itself of backlogs by virtue of unification. Is there any way that unification as proposed in this bill, without creating new judges and new courtrooms—it could address maybe a whole pile of things, and you have suggested that—can address the problem of backlogs and overworked judges in a meaningful way?

Mr Baar: Not directly. Presumably, if you were able to predict what judges would be in your community, if the district court clerks' office or the registry in St Catharines were able to predict more adequately when a judge would be available, it could improve its scheduling system. It would not have to worry about whether or not a judge was coming from Toronto and having to deal with all the problems of operating on circuit.

Most people who do court scheduling say that a circuit system is just terrible because it does not allow judges to be seized of a particular case, if it is a complex case, through a number of steps. It is what is referred to as a master calendar. You just come in and do that stage of it, and then you leave and somebody else comes in. You have no incentive at all, if you are a judge out on circuit, to complete the work, because if you do not finish it, they will have to bring somebody else in to do it.

The circuit system is not a particularly good way of managing the scheduling systems in courts. If you get rid of that or you reduce it to the point where it is in a smaller circuit, maybe in five or six counties, you are in a position where you can run the court more efficiently. Whether you take advantage of that or not is something else again.

In other words, reorganization in some aspects is a necessary condition for improving administration, but it is not a sufficient one. This is why my concern is that if there is a degree of controversy and bitterness over the legislation, we will not be able to take full advantage of the new techniques that will be facilitated by this reorganization.

Mr Kormos: There is nothing that you see there that would suggest any change at the provincial level, which in the criminal context does the bulk of criminal work currently.

Mr Baar: Oh yes, in terms of the criminal division. I think there has to be a real need to work through that. The most important change that will occur in the provincial criminal courts hopefully will be the appointment of particularly well qualified and respected lawyers to the bench through the use of a new selection system, through the use of the screening committee, the one chaired by Professor Russell.

I think that if we start getting the kinds of provincial criminal judges in Ontario that Quebec has in its centres, there will be somewhat more support for enlarging the jurisdiction and enhancing the linkages between the provincially appointed and federally appointed judges who handle criminal matters. I think we can get some benefits from that, but more of the benefits will flow from improving the quality of appointments, which may make it possible for us to move to phase 2 at some point in the future. But you are

right; the great bulk of those courts are not going to be any different when this goes in on 1 January or 1 July of next year. If you walk into your criminal division court, you will not see any difference.

Mr Kormos: I know you are familiar with the Niagara North-St Catharines courthouse, obviously. You have a whole bunch of district court judges there, and maybe that is the 28th rule, because everybody thinks he works as hard as he possibly can. You have a whole bunch of district court judges there who would insist to anybody that they are working hard and working steadily, and it would very much appear that they are. You have a couple of provincial judges—criminal, and you throw in a family, civil—and they seem to be working real hard. Their problems in scheduling are, in some instances, finding judges and, in other instances, finding space to do it.

Once again, how do you shorten backlogs without increasing the number of judges, and then once you have increased the number of judges, how do you ensure that you have space and staff, reporters, attendants, those sorts of people, to work with them?

Mr Baar: One of the messages that has really been pushed by a lot of people who have done management work within the courts is that simply increasing the number of judges and the number of courtrooms is not the answer by itself.

One of the key things that has happened through the bar association's joint committee on court reform is the development of something called case flow management. We are now trying to develop through that three pilot programs in Ontario—the one that is furthest advanced is in Windsor—where there would be substantial changes in the rules in order to involve court officials at an earlier stage in developing notices and in monitoring the cases. They will be able to better predict when a case is going to go to trial and when it is not, so they will not have the kind of downtime that occurs in a lot of courts.

It is possible to enhance the capacity of those existing courtrooms and those existing judges in a place like St Catharines through the development of management techniques developed co-operatively by the judiciary, court staff and the bar. This has been done in a lot of jurisdictions. I have seen it working in Australia. It works and it really helps contribute to this, except it has to be done taking into account manpower needs as well. I do not deny that there may not be a need for additional judges, but I suspect in a lot of these courts, it would make sense to go in and take a look and see what they are doing.

1710

A couple of months ago, I did this in the provincial court in Brampton, which we all know has just terrible delays. I discovered that a lot of the problems they had were simply because of how bad their scheduling systems were. Because they were so far behind, they would schedule more cases. People would hang around all day and at the end of the day they would have to reschedule their cases. They would put them at the top of the list for a month or two down the road when a lot of other people would be lined up and their cases would not be reached. What seemed to be happening was that more time was being spent rescheduling cases than deciding them.

It showed up in the statistics, where I think around 1986, with the same number of judges, they disposed of 20,000 criminal charges; by 1987, they only

disposed of 16,000 criminal charges. It was not because the judges were not working hard; they were probably working harder, but they were spending a lot of time working not as judges but as scheduling clerks. That is part of what we need to be able to take a look at and get on top of.

So the prescription for any individual court depends upon what the situation is in that community. Maybe certain communities really need some extra judges or some extra courtrooms. Other communities might need some attention paid to just what is actually going on in that courtroom. Are they working hard on things that they ought to be doing or are they wasting time on a lot of other matters?

Mr Kormos: The province as of late appears to have been experiencing a deep-pocket-short-arm syndrome when it comes to court staff: court reporters, administrative staff in courtrooms. I am talking about hiring people on contract as compared to hiring real honest-to-goodness employees. Is that problematic in terms of hiring committed people?

Let me add to that. I understand, for instance, that in places like College Park there is an increasing turnover in staff because of the low pay and what are perceived as unsavory working conditions, believe it or not, at College Park. Can you comment on that?

Mr Baar: I cannot speak about College Park in particular. In fact, College Park processes its cases faster than any of the other provincial courts in the borough of Toronto. In data that I gathered from 1987, the committals that went through College Park came through on an average of 75 days from first appearance. In St Catharines, it could not make 150 days in its provincial court in the same period.

The Chairman: Are you holding all that up, Peter? Are you holding up things in St Catharines?

Mr Kormos: That is a different discussion.

Mr Kanter: No more than you are in Brampton, Mr Chairman.

Mr Kormos: Tactics and strategy on the part of defence counsel is a totally different issue, Mr Chairman.

Mr Baar: I think those work both ways, obviously. Clearly, what you are describing is something that is more related to personnel management and how you set up a personnel system. A lot of times you find that when a province wants to develop uniform standards for its employees, it winds up paying the same amount of money if they are working in downtown Toronto as it pays them for working in a less expensive area of the province.

Believe it or not, if you think it is bad here, it turns out that in the United States there is a uniform pay scale in all 94 federal district courts from Maine to California, such that I think right now a probation officer in the federal court in San Francisco is paid \$10,000 less than a probation officer working for the state court in California, and they cannot hire anybody. They keep saying, "Look, can't we get a different pay scale that recognizes the fact that there are pay differentials that we cannot compete with?"

Part of this is how you really fine-tune a system. We are at the point where we are still in the dark ages, where we have employees who have hours on

contract. You do not have proper benefit programs or anything else. You are basically exploiting undereducated women in a good number of provincial court locations and district court locations in this province. I think if we believe in pay equity, we will find that we will be able to develop that at the same time as we improve our court administrative operations.

The Chairman: I think we are getting a little beyond the bill. When you start talking about San Francisco and so on, all you are doing is whetting the appetite of the members. The next thing you know, they will be moving the venue of these hearings.

Interjection: We would not want to do that.

Mr Kormos: You got nervous when you talked about what was happening for women working for the Attorney General's department here in Ontario.

The Chairman: That may be, Mr Kormos, but I do not think that is the tenor of the bill we are talking about, so I am going to pass.

Thank you, professor, for coming before us. We appreciate the information you have provided to us and the answers you have given to Mr Kormos. Have a good holiday.

Mr Baar: I wish you the best of luck through the rest of your proceedings.

The Chairman: I thought you were going to say you wish us luck on when we are going to get out of here.

Mr Kormos: Never.

Mr Mahoney: It appears that way.

The Chairman: Thank you very much. We now have Nancy Mossip. Would you like to come forward, Nancy? She is from the County and District Law Presidents' Association. She is an expert on Brampton, I believe. Welcome to the justice committee.

COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

Ms Mossip: I did hand out sort of a brief summary. As the witnesses before me and after me will say, we are all a little short on time in trying to organize our thoughts here. Along with many other organizations, we have looked at the issue of court reform in many different ways. Some of the specific recommendations set out in the bill were quite new to us and we, along with other people, have tried to get some thoughts together.

You can see from our association that we are a provincial organization that represents the presidents of all the local associations, so I have tried to include a couple of things in this presentation. One is number 2, which sets out a resolution of our association that was passed in May 1989. That would be quite representative of how all the association members feel on the issue of court reform, and specifically the recommendations that had been announced just prior to our meeting.

We meet biannually and this was at our May plenary. I believe the resolution passed unanimously. There were two votes against the resolution, but they were not voting against the resolution's content, they were voting

more on the idea that they really wanted to go back to their local association to talk about it some more.

As an executive, we felt quite comfortable in making a presentation today that supports the reform proposals of the Attorney General, specifically as set out in Bill 2. We have some concerns that deal in a general nature with how the bill is going to be implemented and then a couple of specific comments.

Since our association does represent really all lawyers practising outside of Toronto, it is not surprising that the court reform measures are welcomed by us. We generally practise with district court judges. In most cases, the majority of litigation outside of Toronto would be completed by district court judges. There are sittings of the High Court that come to all districts but at various times and at various levels of accessibility, so any court reform that increases the accessibility of judges is welcomed by the bar practising outside of Toronto.

One of the things that we, as an organization, have always stressed in any court reforms is that we are very keen to be involved in how they are implemented. I might say that the Attorney General has already looked informally at some implementation committee ideas and we are involved in that and we welcome that opportunity.

What we do not want is to have everything regionalized away from the local counties. Local counties, not just in their law associations but in their court accessibility, do have a very important life not just to the practising bar, obviously, but to the people in the communities.

1720

So you will see that number 5 there talks about our concern that the existing physical facilities be maintained, but also that the accessibility of the judges in those facilities be maintained, whether they come from a pool of regional judges or whether they come from—we do not really care where they come from as long as we have accessibility at the local level to judges so that we can service our clients as best we can.

There is a great debate about whether there has been enough consultation with respect to the specific reforms on the bill. I suppose that could be debated for ever. I am not disagreeing with those who say that maybe the bill needed to be sent out in some other form. I am not criticizing those who say that, but we do not support that position.

We think there has been a lot of consultation on court reform and we acknowledge that the specific recommendations have not been circulated. We acknowledge that the phase 2 reforms are probably different from what most people would have envisioned the Attorney General was going to go to.

But as far as the reforms set out in Bill 2 are concerned, I do not think anybody could say that that reform has not been contemplated and discussed at various times in the last eight or nine years, something like that. I do not know; Craig would know better. I only say that because Craig is older than me so he would know because he has been around longer than me.

With respect to a couple of the issues that we addressed about specific concerns to the legislation, starting with number 6, the Ministry of the Attorney General people have already addressed their minds to an amendment. I

have just put an asterisk there because, as an executive, we really have not discussed the proposed amendments.

That has to do with how the bar members will be appointed to the Ontario Courts Management Committee and the regional courts management committee. I can say candidly that obviously we have no disagreement with them. The suggestion is that it be two barristers and solicitors appointed jointly by the presidents of the county and district law associations in the region.

Of course, we would be delighted to have that kind of involvement. I am sure you will hear quite a different position from the Canadian Bar Association when its representatives talk tomorrow as to what lawyers they would like to have on the management committee. I think it is a very tricky issue as to which bar members are going to be appointed on there.

When we originally did our brief, you will see that I said that it was members of the bar who are representative of a cross-section of the bar. So I was not particularly advocating that it be county and district presidents, although that has been a traditional way of getting representation from the bar throughout the province.

I am not saying that we are stuck on that idea, and if other members from the Canadian Bar Association—Ontario or the Advocates' Society or the Law Society of Upper Canada want to get together and talk about that, we are not foreclosing that. I think that the change from it being a person appointed by the Attorney General to someone elected by the bar people is a very positive move. We were certainly against any notion that the bar representatives should be appointed by the Attorney General.

The other thing was with respect to the chairing of the Ontario Courts Management Committee. I am not sure if other people have addressed this to you, but our association does not think it is appropriate that the Attorney General or his designate chair that committee. We think that it should be a clear signal that the administration of justice, as looked at in this co-operative management program, is independent of the ministry and that the ministry is one party on that committee, either regionally or provincially. To ensure that the independence of the judiciary is preserved, for one thing, the committee should not be chaired by the Attorney General or his designate.

The Chairman: What section is that?

Ms Mossip: With respect to chairing?

The Chairman: It is 92, but I cannot find where it is chaired by the—it is a rotational basis.

Ms Mossip: Yes, it is rotational. Subsection 92b(2), "Who to preside," right? That is rotational.

Of a general nature with respect to these committees, having sat on the Ontario Bench and Bar Council for a couple of years now, it is clear to me what we can and cannot do there and that the independence of the judiciary is well established as a precedent with respect to that sort of collective group that meets. It is not clear in here, maybe because it cannot be made clear, but I think it is a potential problem that should be looked at, these management committees where their authority is necessarily going to conflict with that of either the chief judge or the regional senior judges.

Who is going to have ultimate authority over the assigning of judges? Where it talks in general terms about the function of the committee, such as in subsection 92(3), "The function of the committee is to consider and recommend to the appropriate authority policies and procedures to promote the better administration of justice and the effective use of resources, including judicial and other personnel, in the public interest," there is necessarily a potential for conflict there in talking about the powers of a chief or regional senior judge in section 93, such as determining the sittings and assigning cases to individual judges.

I am not saying I necessarily have an answer to that, but I think it is crucial that the judiciary knows it is independent and that we, as bar members sitting on management committees, know our limitations with respect to where the assigning of judicial resources is not our territory. There could be nothing worse than arguing with regional senior or chief judges about where or how judges should be assigned. I think it just needs to be made clear. Maybe I am not reading it carefully enough or whatever, but I think there is potential for conflict there and the judges need to be satisfied as to what their role is in that regard.

The balance of the issues that we as an association have been concerned with really deal with the implementation of the court reforms. We will probably have a lot more to say with respect to the legislation regarding phase 2 that the Attorney General wishes to deal with but, as far as phase 1 and the implementation of those reforms in general are concerned, we wanted to come and let the committee know that we supported them and that we wanted to be involved in how they were implemented.

The Chairman: You have before you a letter from McCarthy and McCarthy, signed by J. J. Robinette. You have actually addressed one of the issues he had about the Attorney General being one of the rotating chairmen, the question of the constitutionality of that.

I have one person thus far, Mr Kanter. Before I do that, was there any consideration by your committee as to any other issues in terms of constitutionality or the independence argument?

Ms Mossip: As you may know, our executive members are members of the Joint Committee on Court Reform, and that issue was raised by the joint committee. They feel very strongly about it. We feel that is the purview of the provincial and the federal governments to work out, and they will hire all kinds of people to argue about the constitutionality. It is not our job to say whether or not we think the reforms are constitutional.

If there is a problem, which we are not sure there is—constitutional minds much greater than mine would be able to tell you whether there is or there is not—we will be looking at that issue. We did not want to come here and say, "We think there should be a constitutional reference." We do not know if there should be. We assume that the governments are going to work it out and we think there has been co-operation. British Columbia is asking for co-operation constitutionally, and we are going to if these reforms are passed. We think it will be sorted out at the appropriate levels or there will be the appropriate challenges.

1730

Mr Kanter: I have a couple of questions about your association and a couple about your specific brief. As a nonpractising, Toronto-based lawyer, I

am perhaps not as familiar with the County and District Law Presidents' Association as some of my colleagues here.

The Chairman: Would you go through that again?

Mr Kanter: Nonpractising, Toronto-based lawyer. Yes, I think that is right.

My first question basically relates to membership. You mentioned at one point, I think, that it was most or all lawyers outside of Toronto. Could you give some idea of how many people are members of your association?

Ms Mossip: Okay. The association itself is made up of, I believe, 48 law associations across Ontario.

Mr Kanter: How many people would be members of those associations? Do you have any idea of that?

Ms Mossip: I do not think I could tell you that.

The Chairman: It is growing every day.

Ms Mossip: Well, no, because you see, in Rainy River, there are six practising lawyers or whatever, and there are six members in the association. In Peel, there are 350 lawyers, and there are 250 who are members of the association. Certainly in the smaller counties, I would say 90 per cent of all lawyers belong to the local association. In Toronto, I could not give you the numbers. What are there, 15,000 lawyers? How many lawyers practise in Toronto?

Mr Polsinelli: Too many.

Ms Mossip: How many? Too many.

But that includes Scarborough, whatever. Miles O'Reilly could tell you differently, but I do not think you would find that 50 per cent are members of the association. That would not be the case in the local associations. In general terms, I could say we know the total number of lawyers practising outside of Toronto, and you know—

The Chairman: We can maybe add a little expert evidence; we have those figures if Mr Kanter wants them.

Ms Mossip: Do you? Okay.

Mr Kanter: I would be interested if Mr Perkins has something to add, sure.

Mr Perkins: Yes, I do actually. We thought the question might be asked, so we checked with the Law Society of Upper Canada's records department, and we found that there are 6,846 lawyers outside Toronto in private practice. The County and District Law Presidents' Association treasurer, Larry Morin of Windsor, reports that there are 6,075 members of the county law associations. That does not include any of the county of York, that is, the Toronto people.

Ms Mossip: Did he say there were 48 associations?

Mr Perkins: My understanding is that there are 48 associations. We

did not ask him that, but I understood there were 48, plus the one in Toronto, which does not belong.

Mr Kanter: That is helpful. As I understand it, they all supported this proposal, with the exception of several who were concerned not so much in principle but wanted further consultation with their members. Is that correct?

Ms Mossip: Yes, it could have been one or two. I cannot remember. It may actually have been only one vote. The other one may have abstained. The reason he voted against it was that he thought he should go back to his local association.

Mr Kanter: I appreciate that. So it was a concern of consultation, not of objection in principle.

Ms Mossip: Right.

Mr Kanter: The other question I want to raise with you relates to some of the specific concerns. I think you referred quite well to items 6(a) and (b), which relate to your concern that the members of the bar not be appointed by the Attorney General; it should be a cross-section of the bar.

We have just very recently seen the amendments, as you have just very recently seen the amendments, that suggested the lawyers in both the Ontario Courts Management Committee and the regional courts management committee should be chosen at least in part by the presidents of county and district law associations; I think two lawyers for the Ontario committee and, I guess, two lawyers for the regional courts management committee.

You said that more or less meets your concerns there. What I did want to ask you about was the concern in item (c). That was your concern that this bill not interfere with the independence of the judiciary in administering its own court; your comment that the legislation is not clear as to who has the ultimate authority over certain issues.

Again, this just came before us this afternoon. I noticed a list of duties and powers that will remain with judges which I just want to allude to briefly, which sounded very similar to your concerns. According to section 93, as amended, "the powers and duties of a judge...include the following," and there is a list of five items.

The Chairman: There are actually six.

Mr Kanter: You are right, Mr Chairman. There is 3 and 3a. I stand corrected.

"1. Determining the sittings of the court.

"2. Assigning judges to the sittings."

"3. Assigning cases to individual judges.

"3a. Determining the sitting schedules and places of sittings for individual judges.

"4. Determining the total annual, monthly and weekly workload of individual judges.

"5. Preparing trial lists and assigning courtrooms to the extent necessary to control the determination of who is assigned to hear particular cases."

Would you say those amendments met the concerns, generally, in item 6(c) of your brief? Is that generally the kind of concern you have?

Ms Mossip: Again, perhaps the policy people—I have just seen these amendments.

Mr Kanter: I appreciate that these have come very recently to us all.

Ms Mossip: Again, it could be interpretation of legislation. Perhaps the policy people can rest my mind; as well, I am sure, as some of the 'judges'. What I think the problem is, is that where they set out the function of the committees it leaves it open to the potential that the committees will be looking at the administration of justice and the effective use of resources, including judicial and other personnel. To me, that is definitely in conflict with the judges having absolute power to assign their own judicial resources.

Mr Kanter: I take it, then, that your concern would be that it be as clear as possible that section 93, which sets out the powers and duties of a judge—and I think it is a chief or regional senior judge—clearly supersedes the power set out in subsection 92(3), which deals with the function of the committee.

Ms Mossip: I think we would feel more comfortable with that, in that that would ensure, and make it clear to them who does have that power.

Mr Kanter: I think I understand both the amendments and your concern.

Mr Kormos: As you may know, the matter of the constitutional legitimacy of this bill has been raised from a couple of sources.

The Chairman: Could you lean forward?

Mr Kormos: I will turn the volume up or lean forward, one or the other.

The Chairman: We have to hear you, too.

Mr Mahoney: No, we do not.

Mr Kormos: These guys would not understand what I was talking about, anyway. They are not interested.

The Chairman: There are learned members of the bar on this committee.

Mr Kormos: Yes. Some of them are reflecting upon more serious personal affairs that have distracted them for the afternoon. In any event, Ms Mossip, the constitutional legitimacy or validity of this legislation has been raised. I am wondering if your association addressed that issue at all?

The Chairman: I asked that question of her at the outset and she indicated that they felt they did not have to. Is that not what you told me? Were you here, Mr Kormos?

Mr Kormos: Of course not.

The Chairman: I had asked that question of her, because I was concerned about that in light of J. J. Robinette's—

Mr Kormos: That was a very good letter. He is no slacker, either.

Mr Mahoney: I am sure he will be delighted to know you feel that way.

Mr Kormos: And I am sure he will be interested in knowing that other people think his comments are not worth the paper they are written on.

You say, "The association supports the passage of the bill as quickly as possible, so that all members of the bench, bar and Ministry of the Attorney General can get down to serious discussions regarding implementation of the bill." I think I know what you mean. I am hoping you do not mean, "Just pass it in whatever way, shape or form, and then let's concern ourselves with the problems after the fact." That is not what you mean, is it?

Ms Mossip: No, I do not mean that. What I do mean is that the debate about whether the philosophy of the reforms should be discussed any longer—We do not want to get involved in another six-month discussion about whether or not there should be a merger, for instance, or whether or not we should debate the philosophy of the reforms. What we are saying is that we do not disagree with the philosophy. There are some amendments of a minor nature that we think should be made, but of a general philosophical nature we are supporting it, and we think delay is not necessarily in the interests of the public.

1740

Mr Kormos: Unless it is bad legislation.

Ms Mossip: Unless it is bad legislation.

Mr Kormos: Can you comment on the matter of delay in the court system and how you perceive this merger of courts as resolving, if indeed you see it at all as resolving, the problems of delay?

Ms Mossip: We think it will be a tremendous help. First, the regionalizing of the administration of the delivery of legal services throughout the province is a good idea, looking at larger centres with a larger pool that can still be spread back to the local areas. But in some areas, they do not have even one local judge who sits all the time, so that if there are cases that need to be heard, there is now going to be a pool of judges, both from the district court and the High Court, who are going to be available to hear those.

We hope and we would have thought that these reforms would mean that a regional senior judge, having a larger pool and knowing a larger area that he or she is administering, would be able to utilize those resources in a better way; rather than in a town or district where there may be only one or two judges, if that judge is unavailable for whatever reason, tied up with a long case or whatever, there is more difficulty in getting judge power there. That is what our hope was.

Mr Kormos: Are there idle judges around? Are there judges sitting on their hands, district court judges or Supreme Court judges doing nothing, who would be available to do what you are saying they would be available to do?

The Chairman: You want to be very careful answering that question, Nancy.

Ms Mossip: I did not say there were any idle judges around. Please. That is not what I said. As a matter of fact, I think there are some judges who, because of the nature of a criminal case or whatever, can be tied up for weeks and then that makes it difficult in that jurisdiction to maybe get another trial going.

I tend to think that the judges in fact are quite busy. I think that where there are areas that may need help, if there is a larger pool of judges to administer or give that help, that is why it will be better. I do not think there are judges sitting around doing nothing.

The Chairman: There are instances, though, of which I am sure you are aware. For instance, in Orangeville, the judges who have been up there have always volunteered to go to other places, but if you had this system in place, you would not necessarily have that volunteering being necessary. I suppose that is what you are—

Ms Mossip: As a matter of fact, I think the district court so far—and this may be true of the High Court; I am just more familiar with the district court—is quite good about sending its district court judges all over the province to make sure there is help being given wherever it is necessary. The High Court is more limited, because there are specific sittings. They do not have the ability to just go up to Kenora or somewhere else if the sittings are not scheduled there. There would not be as much difficulty; there would probably be more flexibility around sittings and who is available to do those sittings.

The Chairman: Thank you very much for coming out from the great metropolis of Mississauga to give us your information. We wish you a safe trip back. I am sure it will not be speedy, though.

Ms Mossip: Thank you very much.

The Chairman: Tomorrow, just as a reminder, we have the Advocates' Society at 3:30, we have the Joint Committee on Court Reform at 4:30 and we have the Canadian Bar Association—Ontario at 5:15. Can I find out whether we would be able to proceed if you very busy gentlemen are not able to be here at 3:30? Could we have that concurrence? I notice Mr Runciman is nodding yes.

Mr Kormos: No, Mr Chairman. I will be here as soon as this committee is eligible to meet.

The Chairman: We are entitled to sit after routine proceedings and that is not, that I recall—I am sorry: I can recall it being later than 3:30. In fact, I can recall it being six or seven days after. But in the event that routine proceedings have been finalized, do we have your permission, as Mr Runciman has kindly given us, to proceed to hear the Advocates' Society? You would not want them to sit around here, with me having to indicate that—

Mr Kormos: You do not threaten me, least of all with the Advocates' Society—

The Chairman: No, no.

Mr Kormos: I will be here. I am not going to promise that, because then if I break the promise you would be peeved.

The Chairman: You do not have to be here. All I am asking is whether we can proceed in your absence.

Mr Kormos: No.

The Chairman: All right. We do not have unanimous consent to that effect. We stand adjourned until after routine proceedings tomorrow.

The committee adjourned at 1746.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE AMENDMENT ACT, 1989

COURT REFORM STATUTE LAW AMENDMENT ACT, 1989

MONDAY 17 JULY 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Clerk: Arnott, Douglas

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service

Witnesses:

From the Advocates' Society:

Stradiotto, Rino, Past President

Jarvis, Peter G., President

From the Joint Committee on Court Reform:

Oatley, Roger G., Central East Regional Chairman

Jarvis, Peter G.

From the Canadian Bar Association—Ontario:

Bliss, Harvey, Past President

Grenkie, J. Douglas, President

Pattillo, Laurence A., Member at Large, Executive Committee

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 17 July 1989

The committee met at 1536 in room 228.

COURTS OF JUSTICE AMENDMENT ACT, 1989
(continued)

COURT REFORM STATUTE LAW AMENDMENT ACT, 1989
(continued)

Consideration of Bill 2, An Act to amend the Courts of Justice Act, 1984, and Bill 3, An Act to amend certain Statutes of Ontario Consequent upon Amendments to the Courts of Justice Act, 1984.

The Chairman: I want to thank the House leaders of the various parties for agreeing to allow us to sit even though routine proceedings are not yet over.

We have before us this afternoon from the Advocates' Society, Peter G. Jarvis, QC, president, and Rino Stradiotto, QC, immediate past-president. I understand that Mr Pattillo may join you gentlemen. He is on for the Canadian Bar Association.

If you would like to proceed, perhaps you would introduce yourselves formally for the record so we can preserve your words of wisdom for posterity, and then you can proceed. We have scheduled an hour. You can use all of that if you like. It is your time, but if there is time left over I will allocate it among the members for astute questioning.

ADVOCATES' SOCIETY

Mr Jarvis: I am Peter Jarvis, president of the Advocates' Society. I intend to let Mr Stradiotto make the presentation for the Advocates' Society. As you will hear, I will be making a presentation on behalf of the joint committee. A lot of this is somewhat ingrown, but so you will understand, that is the way in which we intend to proceed. Without further ado, I will ask Mr Stradiotto to proceed.

Mr Stradiotto: Are these proceedings recorded?

The Chairman: Yes.

Mr Stradiotto: If we required it, would we be able to get a tape of these?

The Chairman: I do not think there would be any problem getting copies of the Hansard transcript, yes.

Mr Stradiotto: As Mr Jarvis told you, I am the immediate past-president of the Advocates' Society. My term of office expired on 27 June, which is just quite recently.

Let me just quickly, for a moment, tell you what the Advocates' Society is. I think that might be of some importance in this respect. First of all, it

is a nonprofit organization which was incorporated in 1963. It is unique in the sense that it is a membership that is restricted to advocates; not only to advocates, but advocates of some experience. You have to be in the practice for five years and devote more than 70 per cent of your time to advocacy.

There are somewhere over 1,800 members, close to 2,000, and they are throughout Ontario. We have members from every jurisdiction in the province. In fact, our bylaws are mandated that there be representation from outside of Toronto proportionately to the number of advocates. Also, the Advocates' Society is made up of membership involving people who practise exclusively in family law, criminal law and administrative law. So we cover all the fields of advocacy.

The Advocates' Society submitted a brief to Mr Justice Zuber before he produced his report, and following his report we produced a brief to the Attorney General (Mr Scott) commenting on it. In this subsequent brief, that is, the brief to the Attorney General, which was dated 30 October 1987, we set out very succinctly some of our concerns with the whole concept of merger. I am going to be speaking briefly about the concept of merger without getting into details as to how it is to be accomplished.

If I might be permitted, to save some time and because I do not want to produce unnecessary paper for you, I have excerpted from that brief by photocopying it. This is the entire brief, but the comments concerning mergers are set out in very few pages. I have reproduced those pages and I have sufficient copies for all members of the committee; I think I have about 15 copies here.

The Chairman: That is more than adequate, recognizing the numbers here.

Mr Stradiotto: Yes, it would appear to be more than adequate.

I do not want to belabour the comments we made in that particular brief. In effect, the message in that brief is that we, the members of the Advocates' Society, took a serious look at the function of the Supreme Court of Ontario, trial division, and assessed it to be a function that is extremely important to the administration of justice and worth preserving.

We attempted to focus not on the makeup of the court as much as on the function and the purpose it serves. We are as concerned about accessibility and affordability of our court system as the Attorney General and the justice ministry are, but we are also concerned with quality and level of performance. They are words that appear very rarely in Mr Justice Zuber's report and the announcements made by the Attorney General. Those aspects of our system of justice concern us considerably.

First of all, I want to make it clear that while we focused, in some respects, on the aspect of merger in part of our brief, like all the other legal associations we concurred with the Attorney General that reforms were badly needed. We outlined in our brief some of the areas of reform that we thought were badly needed. I do not know that it is necessary to review them, but certainly it would cover the trials' lengths, costs, complexities, procedures, accessibility, affordability and comprehensibility and so on. But when we analyse the function of the Supreme Court of Ontario, we fail to see how any of these problems would be addressed by eliminating that court or any other court in any fashion. We did not see how those problems could be laid at the feet of the divisions in the courts and the hierarchy in the court system.

I will just make a brief comment on what our concerns were. They were that in eliminating the function of this court, we would eliminate a court that had collegiality, travelled throughout the province—it was not stationary in any particular district—and adjudicated complex cases involving substantive issues, and by so doing, by its reasoned judgements, it provided precedents which were timely and very helpful to the practising bar.

We can all talk about appeals when dealing with precedent, but appeals take a year and a half, sometimes two years, after the trial, and we have cases to deal with and advise clients on every day. These reasoned trial decisions by this collegial group which went throughout the province and evenhandedly administered justice were of great assistance to the practising bar in advising its clients whether to settle or how to resolve their disputes and whether to proceed to trial or not. This is a very cost-effective way of resolving disputes.

If now, instead, we are going to have a court composed of several hundreds of judges, then in our view that is going to severely impair that function, particularly if we pocket these judges in different regions and there is no movement from region to region. The collegiality will be lost and there is the danger that we will balkanize our province.

The brief and the comments that I have given to you outline in more detail some of these concerns. None the less, we, the Advocates' Society, joined with the Canadian Bar Association, the County of York, the County and District Law Presidents' Association and the Criminal Lawyers Association in forming the Joint Committee on Court Reform. The reason we did that is that we thought if we could get some consensus among the major associations representing the bar and present that consensus to the Attorney General it might help facilitate the avenues that reform should take.

We had participating with us in this joint committee representatives from the Law Society of Upper Canada and judges from all levels of the court. This committee met frequently with the court reform task force of the Ministry of the Attorney General, which is made up of senior deputy ministers and others in government offices. A lot of work was done over a period of a year and a half, numerous meetings, working co-operatively and we thought considerable progress had been made in addressing the reforms that we have all recognized were required.

On 1 May, the Attorney General made an announcement, and in that announcement he contained aspects of reform that had never been considered or brought to the attention of the joint committee at any time. I can get into the details.

A phase 2 complete merger down to the provincial court level was never discussed in the Zuber Report of the Ontario Courts Inquiry or in any information we ever received from the Attorney General's office or by the joint committee at any time. In that respect, 1 May 1989 was a shocking disclosure to the joint committee.

There was also this idea of just putting the small claims court into the hands of the general division in the merged district and supreme courts and the phasing out of masters. These are three principal aspects of the 1 May announcements that were never on the discussion tables in the many meetings that were held with the joint committee. They are of great concern to us for two reasons substantively, and also of concern to us as to the process that is occurring here.

While we work carefully and co-operatively with the representatives of the Ministry of the Attorney General, it seems to us—we cannot help but see it that way—that there is another agenda that is going on, because that announcement was in that sense a complete surprise; and there seems to be a piece being set as to how this whole reform process has to take place, which borders on the unconscionable. I will come back to that in a minute.

These concerns we have of collegiality, that there will continue to be capable, experienced trial judges trying substantive cases and setting trial jurisprudence for us and that these trials take place in front of judges who are inclined to avoid balkanizing our province, all are of concern to us; Bill 2 and Bill 3 are just very, very vague in the manner in which they deal with these aspects of it.

If I might just make the further comment that, if we are going to deal with this—that is, if none the less, in the process, we going to end up with experienced, capable trial judges who, throughout the province, not only in a specific district permanently situated, adjudicate on these kinds of cases evenhandedly throughout the province—then it is hard to see how it is going to happen in the wording of Bill 2 and Bill 3.

If it is going to happen by having one court and having some senior judge allocate judges, then I have only this to say about that. If we think that the appearance of good and better judges exists because of the existing hierarchy, or if we think that confuses people, then what are we going to have when we have one court, but where certain judges in that court are not allocated to try a certain level of cases while others are? That is an invidious process that certainly caters to the thought that some judges are better than others and certainly smacks of élitism.

1550

One of the principal messages I have to convey, because others will follow me dealing in more detail with some of the aspects of Bill 2 and Bill 3, is, first, the process itself. I have indicated to you our concern when we get the kind of announcement that came out on 1 and 2 May containing aspects of reform never before discussed or considered. Second, there is the pace at which events are transpiring.

We are here dealing with a system of justice that was put together over a period of 100 years or more. A lot of cumulative wisdom went into the formation of our court system. We are now going to radically change it, because that is what Bill 2 and Bill 3 are doing, and we want it to survive usefully for the next 100 years, but it seems that we want to deal with this reform in a matter of months.

I am concerned—I do not know if others are—for instance, that there is a court reform implementation committee which has already been formed. By its terms of reference, it is to deal within the framework of Bill 2 and Bill 3. A meeting of that committee has already been called for 6 July. It seems to almost suggest that Bill 2 and Bill 3 are a given. There is another meeting of that implementation committee scheduled on 27 July. It seems to me that we are getting ahead of ourselves here. It leaves the impression that it is just a formality that we are going through and that within the next week or so—if not the next day or so—Bill 2 and Bill 3 will be a fact.

The Advocates' Society and other members of the legal profession want a reform bill, but we would like to see a bill that we can all work with in the

implementation process. We—by "we" I mean the judges of all levels of the court, the bar, the government and the public—need time; time is needed.

Just dealing, for instance, with the question of the masters, when you read Zuber's report, his only comment concerning the masters was, "Generally speaking, the operation of the master's office is satisfactory and this inquiry makes no recommendation with respect to the nature of that office or its jurisdiction."

He found the operation of the master's office to be quite satisfactory, no recommendations were made for any change and no elimination of the master's office was really seriously discussed at any joint committee meetings. Then the announcement of 1 May says that the masters who are now alive and practising will continue, but there will be no appointment of any further masters and the judges of the General Division will take over their function. How this is going to show to be cost-effective and time-efficient is beyond me.

I have before me—it just shows you the difficulty we have in keeping up with the pace of events—several pages that were sent to me, not to this committee, by one of the masters who prepared this, in conjunction with the rest of the masters, about their concerns with Bill 2 and Bill 3. They are very well expressed and deal directly with the issues of accountability and accessibility.

In places like Alberta, Calgary, Edmonton, Manitoba and British Columbia they have masters and where they merged they continued their masters' offices, and British Columbia is considering expanding their role. Here, suddenly and dramatically, we are going to eliminate them without any discussion. The masters have had no effective input and representation in that regard. You are dealing here with a group of judicial officers who have developed an enormous expertise in specific areas; for example, construction liens. I have got here in my hands a letter from a counsel retained by the lien masters expressing their great concerns about the elimination of masters, because that is what it really amounts to, except for the 12 who are not going to live for ever.

The construction lien master, for instance, has developed over the period of years such an expertise in dealing with lien applications that this is practically where all the applications go—very accessible, extremely cost-efficient and very time-efficient because the master does not need to be re-educated every time.

That is true of a lot of the functions of the masters and we are simply now going to phase it out and with no real serious discussion about the advisability of doing so whatsoever from the bar, from the masters, from the judges who refer all kinds of matters to the masters—references on complicated accounting procedures and what have you, and calculations of damages—because they want to save time, make it cost-efficient and it is a somewhat more informal process than appearing before masters.

Apart from other benefits, it is a tremendous training ground for young advocates and it has a lot of other benefits that I can get into in detail. That is not the purpose of my presentation today. My purpose is to tell you, members of this committee, that a whole area has been given no serious consideration whatsoever, in our view, and it is going to become a fait accompli if you recommend this bill and all its parts and it goes through as it is.

Next, I would like to deal for a brief moment on the small claims court aspect. In my view, not enough thought has been given to this aspect. Again, it really fell on us, with the 1 May announcement that the small claims court jurisdiction was going to be upped somewhat, but we were going to eliminate the small claims court and judges of that court and we were going to turn that over to the General Division judges.

All I can say to you is all examples or all parallels loop, but it seems to me that it is hardly cost-efficient or effective if you were to ask an orthopaedic surgeon, who has developed over a period of time and by a pursuit, an ability to replace knees and hips and undergo complex surgery, to ask these surgeons that one or two days a week or now and again they should all deal with minor ailments.

I feel rather comfortable in saying that if any member of this committee themselves or members of their family had to have a knee or hip replaced, they would want to go to someone who does that, who is trained and educated and specialized in doing that, and not someone who does it now and again but does a whole range of minor medical attendances as well. Not to underestimate the value and contribution of general practitioners, not at all; there is no superiority or inferiority involved in this discussion, in the comparison.

Why, all of a sudden, would we want to have judges who are capable and competent of trying complex matters deal with small claims court part-time or a considerable amount of their time? If you say that is a good teething ground for them, I ask you to consider what kind of applicants you are going to get to this bench. In the tradition of this country, the applicants and the people appointed to the bench generally have come from experienced, qualified practitioners. Those practitioners are not conscripted. They select and they can refuse. If they want to be judges who try complex cases and write decisions, then they choose to go the Supreme Court. If they want to not do that particularly, they can go to other courts. Each court performs an important function, but applicants are attracted because of the type of work.

Now, all of a sudden, the whole broad range down to small claims, to the most serious cases that take a year to try and complex drug cases, complex dredging cases and the Corona mines case and malpractice cases involving brain-damaged children, judges are supposed to try those, but then one or two days a week, try the claims for failure to pay for a painting job done on a house, which is a type of small claims court claim.

This is supposed to be cost-efficient?

The Chairman: That is a rather unusual and curious example, but go ahead.

Mr Stradiotto: It just came off the top of my head. There was nothing hidden in that reference.

It just seems to me it would be hardly cost-efficient and effective. Once again, I am not here to persuade you on details. It is simply to say there has been practically, in our view, no thought given to this whole concept. Time is required to say should we eliminate the court, how and who should take care of that type of work and under what terms.

Bills 2 and 3 are so vague about that, that it leaves all to be dealt with later, if it is simply passed, and that can create a mess. Much more time is required for that kind of movement.

The last aspect I want to deal with is the constitutional problems. As I think is known to this committee, Ian Binnie, QC, was retained by the Supreme Court judges. He addressed a letter on 7 June 1989 to the Attorney General expressing some of his concerns about the constitutional problems.

1600

As you all are aware, the Supreme Court judges feel very strongly that if Bills 2 and 3 were going to be passed as they are drafted and as they were considered in the first two readings, it will create enormous constitutional problems that should be addressed by way of a reference, if necessary, first and not leave it until later on individual cases, which will create chaos for years. Deal with it now, because there are all kinds of cases—criminal, civil, family; name it—that can give rise to serious constitutional problems immediately Bill 2 and 3 go through as presently constituted.

All this was touched on in the letter by Mr Binnie to the Attorney General on 7 June 1989. As a result, just very recently, on 17 July, when I attended the court reform implementation committee, I got handed this thick package of the Attorney General's suggested amendments to deal with possible constitutional problems.

There is the thickness of it. To me, that is a darned good indication of how quickly Bills 2 and 3 have been put together without sufficient thought to the constitutional issues. As soon as some of the problems are raised by a letter to the Attorney General, we get back half an inch of amendments handed to us in late July.

It illustrates to me that we need time to sort this all out, and then, do these satisfy the constitutional problems? I do not know if the committee has, but I have a letter from Ian Binnie that says not at all; all they are directed to do is to try to weaken the legal arguments against Bill 2 on constitutional issues, they do not address substantive policy concerns and significant constitutional issues at all.

Do they or do they not? I am not here to debate that, I am simply here to suggest that we have not had enough time and you do not have enough time in the next day or two to deal with these issues and you have not got sufficient input.

The joint committee obtained the opinion on the constitutional problems from Mr Henderson of the firm of Gowling and Henderson. It can see a great deal of concerns that have yet to be fully addressed.

How are we to do that in the time frames that have been imposed upon us in the middle of the summer, when we know that all kinds of people who should be having an input in this are not available? We need time to deal with and address these constitutional issues.

The Canadian Bar Association made submissions to the standing committee on court reform in extensive submissions dated 10 July 1989. The joint committee also submitted a report of its concerns. The joint committee, as I have already told you, covers the advocates' side, the Canadian Bar Association—Ontario, the Criminal Lawyers Association and the County and District Presidents' Association. It made submissions jointly to the Attorney General and they have not all been resolved—far from it.

As a result of the first announcement, there was considerable concern on

the part of this joint committee. It prepared a further submission, headed principally by a paragraph that says "Please, let's not try to change what took 100 years to put together in a couple of months in the middle of the summer; there are a lot of problems that have to be addressed; let's take the time to do that."

That is the principal part of my address here today. We need the time; this committee needs the time. Otherwise, we are not going to end up with an accessible and affordable system. We are going to have one hell of a time in the implementation process of Bills 2 and 3 as they now read, even given some of the amendments the Ministry of the Attorney General now says it is prepared to make as a result of Mr Binnie's letter.

In my view, we will irreparably risk seriously diminishing the quality and performance of the judiciary in this province. We will certainly risk compromising its independence.

I know there is no great public appeal in all of this. There is no political punch in dealing with the administration of justice. It does not have the pizzazz or is not as politically vote-getting an attraction as some other issues. Yet, we are dealing with by far the most important bill that has come before this government in years. We are dealing with the system of administration of justice of this province, which affects each and every one of us each day. Let's take the time to do it right. All indications are we have not been doing that.

The Chairman: I had suggested questions after Mr Stradiotto finished, but I am wondering if perhaps we should not hear from the Joint Committee on Court Reform, and then we could have questions of both of you gentlemen at the same time. Another reason is that we have agreed to a vote at 5:45 pm. At least, we will all have to leave here at that point, so maybe that is the most expeditious way of doing it.

So, Mr Jarvis and Mr Oatley, if you would like to present the brief from the joint committee, then we will have questions generally afterwards.

Mr Jarvis: That is satisfactory to me, sir. I wonder if the Canadian Bar Association—Ontario representatives would not also be satisfied to do it that way.

The Chairman: If you want to do all three, that is fine.. I have read through them. You strike points that are obviously in accord. No problem. I am not sure that we have enough microphones to record all you gentlemen. Is the committee in agreement that we hear all three groups? Seeing no nays, fine. If you gentlemen who are going to be involved in it would come forward, we will begin.

I take it we have before us now representatives who will speak on the Joint Committee on Court Reform report and the brief we have from the Canadian Bar Association. Is that correct?

Mr Bliss: Yes.

The Chairman: Perhaps just for the purposes of Hansard, you could identify yourselves from my left to right, or right to left.

Mr Jarvis: I am Peter Jarvis, whose position on the joint committee

was as the representative of the Advocates' Society, and I continue to participate with the joint committee on that basis.

Mr Oatley: I am Roger Oatley. I am a lawyer from Barrie and the regional chairman of one of the regions of the joint committee.

Mr Bliss: I think the batting order for the bar association is going to be, first, Doug Grenkie, the current president; Laurence Pattillo, who is behind us, and then I guess I am cleanup, Harvey Bliss, immediate past-president of the bar association.

Mr Grenkie: I am Doug Grenkie.

The Chairman: All right. Mr Jarvis, perhaps you would like to start.

JOINT COMMITTEE ON COURT REFORM

Mr Jarvis: One refrain that you have already been treated to and will be, I am sure, several times throughout the balance of the afternoon, is the problem that the timing of the announcements of the Attorney General have created for all of us.

Tab 7 of the material filed by the joint committee—you do not need to look at it—is a list of the individuals who have participated in the work of the joint committee, a very wide and extensive group of individuals practising litigation in this province in its various manifestations.

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Last week, when we could not proceed, Janet Wilson was here. Janet is the co-chairman of the committee and she has spent untold hours of her life on these issues, as I am sure many of you know. Ken Howie, who is the chairman of the committee, cannot be here and he has similarly spent many, many hours on this work. I have been very directly involved in the work of the joint committee. Luckily, I am not away somewhere. The timing of this presentation today is wretched so far as we are concerned and creates great difficulties for us.

I know that many of the members of this committee are practising lawyers and have practised litigation. The months of June, July, August and September really are essentially impossible for dealing with a matter as important as this, both in terms of the pressures of work and the requirements of some family life. However, we are here and we will do our best to help you.

I would like to begin with a few general words about the Joint Committee on Court Reform. The joint committee developed in response to the Zuber report. As many of you will know, the individual bar groups in this province were consulted by Mr Justice Zuber and separately prepared and filed briefs for his consideration.

Justice Zuber was dealing with a rather formless area. It was court reform in general. There were no specific proposals that were tabled to elicit responses. No one was quite sure what the topic was, apart from in a very general way, and the responses to his invitation for input were various, as you can imagine.

When his report was finally tabled, the bar groups again were asked to comment, and each of them did so. The time available was short and the sheer

impossibility of the bar responding piecemeal to something as important as his report was apparent to everyone who was directly involved. I am not sure whose idea it was—it may well have been Ken Howie's idea, but it certainly was not mine—that the bar groups should get together to discuss at least the possibility of having some common position with respect to these matters because it was thought that it would be helpful not only to the bar, but also to the people in this province that the experience and expertise of the bar be offered to assist in this important project.

That suggestion bore fruit in the joint committee. The joint committee is something unprecedented in the history of the legal profession in Ontario. It is the first time that diverse groups of the bar have come together to simply discuss topics as important as these. The fact that this diverse group was able to produce the reports which were made from time to time, both to Mr Justice Zuber and to the Attorney General, is simply amazing. You will have to take my word for it, but it is.

As Mr Stradiotto told you, the Advocates' Society, for instance, differs on the question of court merger. As the representative of the Advocates' Society, I participated in the work of this committee by not discussing that topic at all. In fact, that topic was never discussed in any of the meetings of the joint committee because it was clear that there was a significant diversity of opinion as to whether or not the court should be merged.

It was the feeling of all of us, however, that it was too important to simply leave, to remain separate, in view of the importance of all of the other issues. So from the moment of its forming until 1 May, if I have the date right, the question of merger, for instance, was never discussed. In fact, the documents produced by the joint committee continue to essentially not respond to the suggestion and the plan on the part of the Attorney General to merge the courts, simply because the group which forms the joint committee knew from the beginning that it differed on the implications of whether or not to merge, and the joint committee could not have done anything effective if it had wasted its time attempting to reach some consensus on that issue. It just was not on.

The work of the committee has been extensive. I think I owe it to my colleagues to say that. At one point in our deliberations, we decided that we needed to raise funds for some of the extensive travel that has been necessary and a budget was prepared. I cannot remember whether it was for the Law Foundation of Ontario or for the Attorney General or for whomever. Someone suggested that it would be wise to make some estimate of the amount of legal time expended to that point in the work with the committee. The precise figure no longer comes to mind, but it was either \$1 million or \$900,000. That was probably six months ago, and that was not puffery. In fact, it was probably understated if anything. The time that has been involved since that point until now has been similar. This has been a matter of importance and the contribution of the bar to this whole process has been significant. I hope it has been recognized.

I think I can speak for all the members of the joint committee in saying that it was our hope that by dealing with current problems and by promoting and discussing incremental reform a bill as complex as the one before you would never be necessary, or at least it would not be necessary at this time.

I think I can speak for all of us in saying that we were somewhat surprised at the nature and the extent of the announcements that were made on 1 May. It is clear and there is no secret that we have had enormous

consultation with the Attorney General's ministry. His people have been at our meetings throughout. They have been helpful. We have had extensive involvement with the judiciary of this province at its various levels. Their help has been immense as well. We have had consultation upon consultation. We cannot complain that there has been no contact or consultation.

Our complaint is that the specific proposals of the Attorney General were never tabled in a direct fashion. That is, we were never told that the Attorney General's recommendation to the House would be that any plan or another be implemented. The discussions were specific in terms of some specific problems such as delays and court lists and specific proposals for how that might be dealt with. A merger, because of the nature of the committee, was not a topic. There could have been no consulting by the joint committee on that topic, for instance.

We had hoped that when the time came for a decision we would have been consulted in a more direct fashion on the nature of the proposals. While it is true that we are here today and that the announcement was made on 1 May, because of the timing and because of the lack of warning the consultation from that point until now has been less than adequate for us to deal with what is on the table. We have gone to great lengths in the joint committee to involve lawyers throughout the province. It is simply not possible to consult throughout the province within a matter of days. The turnaround time for issues in a committee as diverse as this is no less than two or three weeks. There have not been many two- or three-week chunks between 1 May and now.

Notwithstanding my complaints, it should be noted that there have been some positive accomplishments. I do not want them forgotten. There has been the development of a tremendous consensus. The joint committee, for instance, is supportive of the proposition that family disputes be handled in the court of superior jurisdiction, that the jurisdiction that handles these disputes not be fragmented, and we were disappointed that the accomplishment of that aim is to be a part of phase 2 as proposed by this legislation and by the Attorney General's announcement.

We worked very vigorously to develop case management pilot projects. For those of you who do not know, case management involves judicial intervention at a very early stage in the legal process, whether it be civil or criminal. The court, through rules and through meetings with lawyers, has a very real role to play in the timing of events within any one action.

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As I am sure you know, there are three pilot projects that are actively being planned at the present time. The hope is that they can proceed on 1 January. Quite frankly, the announcement by the Attorney General on 1 May has made it much less likely that that will be the case because of the trouble we have had in bringing people together to discuss everything that needs to be discussed, including the bill.

The pilot projects, as you may know, are to be in Windsor, Sault Ste Marie and Toronto. There is no doubt in my mind that the result of those projects will be a new and much more efficient way of disposing of litigation in this province, which will be less costly and more timely and for the benefit of all.

Those of us who have worked on these projects, if I can pat our backs for a moment, feel that what we have done has been an example of what the bar

can do to be constructive in this society. We hope that no matter what takes place as a result of this bill that we can proceed with work in that area.

We have discussed in great detail the matters of court administration. As you know, the bills before you include specific recommendations for court administration. The bar agrees with many of them. There are, however, issues that must be discussed, and they are issues of some importance. Quite simply, there has not been time for those discussions to take place.

I know there is a suggestion that the bill can be amended later. We prefer to deal with the bill before us. We think it inappropriate to pass a bill which requires extensive amendment and which will require extensive consultation in the months ahead.

You will hear from others about issues relating to appellate court structure, because although the bills before you do not specifically deal with appellate court structure, there are issues that arise from the bills before you which will have an effect in that area.

Mr Stradiotto said to you that the merger of the criminal courts into the other superior courts as part of phase 2 was something that was never discussed. He is right about that. In fairness to him, there was one reference to a proposal such as this in one of the discussion papers circulated by the task force on court reform, if that is the correct name, that Mr Johnson conducted in the early part of this year.

What we know as phase 2 was certainly something that was one of a number of options on one of the those papers. I was at the meeting in Toronto, and I can assure you that option was not something that was discussed by anyone at that meeting. I do not think anyone was attracted to it in any way, and it was somewhat surprising to see that it was announced by the government as its long-term policy.

Certainly, if it had been announced, there would have been a great deal of discussion. As it is now, there may be serious constitutional issues with that plan, and we fear that we will be dealing with a bill, an announced plan, that for constitutional and practical reasons may be unsuccessful and may lead to a tremendous waste of time and effort.

To my knowledge, there is no merged court of general criminal jurisdiction in this country and what has been announced is something that is unique.

I make no apologies, but I state for the record, if I may, that when it comes to constitutional matters, my personal analysis of them is not worth the breath it takes me to enunciate them nor is it worth the time it will take for you to hear them.

One of the problems that we have in matters as complex as this and dealing with a general committee is to try to respond to extremely complex problems with really no time to consider opposition or no time to work our way through it.

In the brief that has been presented to you is the opinion of Mr Henderson. That is at tab 3. Mr Henderson, I can assure you, is a lawyer of great eminence in this province. He was not hired with any agenda in mind. The joint committee thought that it would be important to have an independent constitutional opinion as to whether or not there were problems with the bill,

because having spent all of the hours and days that we have on these topics, we would hate to see it all disappear in a large technical fight about constitutional matters.

Mr Henderson's opinion is out of date. The recently announced amendments to the bill in terms of the manner of court merger and other matters have superseded some of what he says. Mr Henderson too is on vacation. We have not been able to have him update his opinion. My submission is that his opinion, and the opinion of this committee, is extremely important in this matter and the timing of the announcement and the timing of the legislation is unfortunate for that reason as well.

Small claims courts have been touched upon by Mr Stradiotto. The committee knows that the way in which small claims are handled in this province varies from place to place. The effectiveness of the small claims procedures is perhaps the second most important access-to-justice issue in this province at any one time. The most important is clearly the working of our criminal courts and the effect they have on the liberty of the subject.

If people cannot feel that they have access to a court which will handle small matters fairly and expeditiously without expensive legal intercession, then it will be a tragedy. In our view, this bill does not address those problems. In fact, the complexity of the proposed changes and the failure to deal with how these matters will be dealt with in the future may well detract from access to justice and may create great problems for all of us.

The bar tends to pay for a system that does not work very well. We are thought less of. People forget that the architects of some of these things are not necessarily us, and if the population is unhappy about the way in which their small claims matters are processed, you will certainly all hear about it, but I can assure you that we will hear about it, chapter and verse. It will be our problem to deal with and we are going to have trouble dealing with it.

One thing that is clear to me and I think to most of the people who have been active in the work of the joint committee is that there is absolutely nothing conceivably as complex as the justice system in a jurisdiction as large and diverse as ours. Our group saw the need for bar involvement and saw the need for constructive bar involvement. We did not want to have to sit back and wait for something to happen and then be in a position of baying and crying about something that had been announced that we were not happy with.

Unfortunately, to some extent, notwithstanding our involvement, we are now being asked to take part in a process which is moving too quickly. I am sure it is frustrating for the government to look back over the last two years of meetings and say that nothing can be said to have moved too quickly, but general discussions are one thing and specific proposals are quite another. When it comes to legal matters and legal structures, to ignore the complexity and to ignore the implications of the problems and not to allow time for full and complete consultation and consideration is a mistake, in my humble view.

We appreciate the consultation we have had, but we would not be fair to our constituents, we would not be fair to the public, if we did not raise these issues now and say how real our concerns are about the speed with which these bills are being pushed through the Legislature.

I would have thought it was clear by now that if there was one thing the system needed, it would be cohesion and togetherness. That cohesion which

seemed to exist or seemed to be coming together really cannot be said to exist any more.

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You heard the other day from a representative of the County and District Law Presidents' Association. They were members of our group from the very beginning. From 1 May—not before—they found it necessary to disassociate themselves from the positions the joint committee was taking and felt it necessary to embrace the provisions of the bill quite quickly. We respect their decision to do that, but the fact remains that there are important problems which should be discussed, which are not being discussed and if this bill is rushed through will only be discussed in the context of amendments.

You all know better than I the difficulty in amending legislation once it has been passed by this body and I would have thought that the dangers of enacting a proper piece of legislation in that manner would be as apparent if not more apparent to you than to us.

I am sorry that my comments are general in nature. It is simply not possible for me to deal with the legislation that has been tabled in a more specific way. The nature of our problems in general are known to you.

For instance, we are sorry that there has not been time to develop a bar position on the appointment of bar representatives to the consultative committees and the House as part of the legislation. Without some independent consultation process or without some independent employment process, there is the danger that some future government will use those committees for political purposes. If that is so, the system of justice will suffer to that extent.

It is just too important in my view that all these matters be worked out in some fashion before the legislation is passed for the bill to proceed quickly.

I would like to ask Roger Oatley, who is with me now, to speak for a few moments. I will be happy to answer any questions that you have later. You have before you the brief that was put together rather speedily by the joint committee with some difficulty. I will be happy later to answer any questions that you have specifically about its contents.

Mr Oatley: You are good people to be listening so intently. There are few topics quite as hard to get excited about as court reform. The measure of my concern about this is my car breaking down, having to rent a car and fight the traffic of Highway 400 to get here.

I think I am somewhat here to dispel any suspicion that no one north of Steeles Avenue is interested in court reform. In fact, I am here as one of eight regional chairs, the regional committees having been set up because of a conviction that the executive of the joint committee had that the problems in the regions were sometimes different, and quite apart from that, it was essential that everybody be involved, the judges in the regions, the court administrators in the regions and the lawyers in the regions.

So there was a very concerted attempt on the part of the executive, which is, as often the case, here in Toronto, to locate chair people, first of all, and subsequently, to make sure that the committees were well staffed. I suppose my committee is an example. We have 15 to 20 people, all of whom are very interested in this issue.

I am here essentially to tell you as living proof that if my committee is any example—and I think it is—we simply have not had any time at all, let alone a reasonable period of time, to come to grips with the bill, the ramifications, the changes it represents from what was anticipated and what was discussed. As Peter says, that is not to say there are not many aspects of it that were anticipated and applauded by many people.

If I can give you just one very quick example to try to attach some realistic significance to it, where I am in Barrie, as I understand it, we are going to be part of a region headquartered in Newmarket. I have no idea how many judges there are going to be. The headquarters will be in Newmarket, but under the plan as we have it at the moment there will be no High Court and no district court; the courts are all going to be at the same level. I have real concern about my clients when they have to appeal a decision from that very large court.

At the moment, with the exception of the Divisional Court, as you know, the only court that we have is the Court of Appeal. That court has been pleading for relief for years and complaining that its workload is far too great and that it is becoming a court because of the Charter of Rights. It simply cannot deal with many legitimate appeals that would otherwise go to that court.

My question—and it is nothing more than that—is, how are we going to have the appeals dealt with that otherwise would have gone somewhere else? Where is the stability in the law going to come from when we have a huge court across the province and a Court of Appeal that cannot deal with the appeals? At the moment, unless my information is out of date, it takes about a year to get to the Court of Appeal for Ontario from an appeal. It is my very humble submission to you that—

The Chairman: That could be fast.

Mr Oatley: It could be fast. I think most of us are concerned that it is going to be much longer unless there is provision for an intermediate Court of Appeal. There is no provision for such a court in this bill. At the moment, I only have questions about that. I have had absolutely no time to consult with the rest of my colleagues on the committee.

In fact, I got commissioned into coming to speak to the committee because I called Janet Wilson to express frustration about my role as a regional chairman and the impossibility of fulfilling it. I realized I had become nothing more than a conduit. I received Janet's faxes and I faxed them to my committee members, but the pace of receiving those faxes made it impossible for any real exchange of ideas.

I sometimes wonder whether we think we have increased the speed at which we think now that we can fax things so quickly. I still think with the speed we used to have when we used the mails. Now that things are being faxed, I cannot keep up with the faxes. As a regional chair, I am embarrassed with my committee members because I do not know what any of them think, and I suspect that my situation is fairly typical.

In fact, when I came here last week, when we were to speak to you before, I was not even aware there had been amendments to the bill. I was embarrassed. I was not aware that there had been a decision—which I have heard about; I have not seen it in writing—that it is to be "merger up" now instead of "merger down," the buzzwords that are being used. I doubt that any

of my colleagues in my region are aware of that or have seen the amendments. I could go on but I would be repeating the same theme.

I want to support the position that Peter has taken, that as uninteresting to all of us, in some respects, as court administration in our system of justice may be, it is just as important to this democracy's functioning as what goes on in this building. We lawyers are awfully sensitive to that; we are sensitive to questions of independence of the bar. I know the chairman has years of experience to attest to that. We are concerned about that.

Several weeks ago, I had a judge, who for obvious reasons will go nameless, who in the middle of a trial invited counsel into his chambers and went on for about an hour about his concerns about the independence of the bar. It is a concern to me that I have not been able to discuss that with my colleagues.

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So my simple request—and it is no more than that; I am not prepared to make any more submissions than that—is that there be a reasonable timetable in order for the Joint Committee on Court Reform, its regional committees and the groups that it is seeking to pull together, consider the bill, discuss it with the Attorney General's ministry and hopefully develop a consensus.

The Chairman: Thank you. Mr Grenkie?

CANADIAN BAR ASSOCIATION—ONTARIO

Mr Grenkie: Thank you for allowing us to be here today. I appreciate the—

The Chairman: The chance to take part in cleanup.

Mr Grenkie: Yes. I want to thank the committee for having us here today and allowing us to make our submissions to the committee, in these trying times, with the bells ringing.

The province of Ontario has always been very active in law reform, and I will be filing with you our submission index, which gives a list of all the submissions we have made to the Legislature from 1976 through to July 1989. Offhand, I might say that the Canadian Bar Association has always played an extensive role in legal reform and research in this province. It is for that reason that we are here today, because we want to be very much a part of court reform and at this point we feel we are not.

I might say that the Canadian Bar Association represents approximately 75 per cent of practising lawyers in Ontario. Indeed, we have approximately 16,000 members in Ontario who are not only practising lawyers but students and government lawyers, as well as some judges.

As such, I feel that we can speak for the lawyers of Ontario. Indeed, I am from Morrisburg, Ontario, which is in eastern Ontario, and it cannot be said that I am part of the Toronto lawyer base. I am part of the base outside of Toronto and feel very proud of that.

The Canadian Bar Association does support merger of the district court and the Supreme Court. We do support regionalization of the judiciary and

administration, subject to the need for the judiciary to rotate within and without the region. We do support unification of the family law jurisdiction at the superior court level.

The CBA, however, has significant concerns that major aspects of the legislation have not been subject to discussion with the bench, the bar and the public. The Attorney General is intent on rushing the legislation to third reading, subject to his undertaking to take into account the views of the bench, bar and public in remedial legislation to be submitted in the fall of 1989.

The CBAO categorically rejects this approach as being contrary to the interests of the public, our legislative tradition and common sense. At this time we are not able to give you a complete, detailed response, because things are moving too quickly. I had for you, for example, a quick brief from the construction law section which I will be filing and which again indicates the importance of the masters when it comes to construction law.

I can advise you that we do not have masters in Morrisburg—maybe in the lodge at Morrisburg, but certainly not in the court structure—as Morrisburg has 2,300 people. But having read the brief from our construction law section, I now realize that these are very important individuals, not only in Toronto, but in the other major centres in the province of Ontario. It appears that these positions should be continued.

I would like to ask at this time Laurence Pattillo, who is on the executive of the Canadian Bar Association and who will be our new secretary of the association as of August of this year, to comment on some other aspects of the legislation.

Mr Pattillo: At the outset, I would just like to say that many members of the Canadian Bar Association participated in the work that the joint committee has done and is doing. We felt this legislation was so fundamentally important to Ontario and to the administration of justice that it was important for the bar association to come here today to independently put forward its position.

We have filed a position paper. If you read it, you will see that the positions we are taking really are not that different from the independent committee, but as I say, it is important that we make the positions known.

For that reason, we agree a lot with the positions Mr Jarvis and Mr Oatley have put forward on behalf of the joint committee and I am not going to spend a lot of time going back over them. The message here today that must get through is that this is far too much moving far too quickly and more time is needed for discussion and consultation. While we agree reform is necessary, the process of that reform has to be proper.

I am going to talk about two very specific issues and then pass the mike to my colleague Mr Bliss.

The first issue is the small claims court. The legislation proposes that the small claims court be merged into the big court, if I can put it that way. We have a serious concern with respect to this. It is either wrong or at the very least premature, in our submission, to merge the small claims court into the big court, the superior court.

What has existed and what has evolved, particularly in the urban centres

like Toronto, is a specialized court for the unrepresented litigant. The jurisdiction in Toronto has been \$3,000 and the specialized court has developed, through the provincial court (civil division), to handle the litigants who are not represented to give them quick and speedy resolution of disputes for that monetary level. Outside Toronto, the jurisdiction has still been \$1,000 and cases within that jurisdiction have been handled by district court judges or deputies.

The proposal is to increase the jurisdiction to \$5,000. We applaud that, but the impact of that in terms of a system of justice for the unrepresented litigant has not been studied, and we are worried that, rather than benefiting the unrepresented litigant, it will harm the unrepresented litigant, and the interests of the issues of the small claims will be lost in the big court, so to speak, the superior court.

Our submission is that, at the very least, the small claims court merger into the superior court should be held back to be dealt with, to be discussed along with phase 2, which proposes a further merger of the criminal law and the family law into the superior court.

On the other hand, the CBAO has for some time now strongly urged that the unification of family law be at the superior court level; that it is important for the people that the family law system serves. Rather than providing for that unification at this stage, the legislation says nothing and it is to be dealt with in phase 2. We have serious concerns that that has to be put off until the future whereas at this time what is being proposed is that the small claims court be merged into the big court.

The last thing I want to talk about very briefly is regionalization from an appellate point of view. As Mr Grenkie has said, the bar association supports regionalization, but it is important to ensure—and the legislation does not deal with this—that the judges in the regions not only rotate within the regions but between the regions. Otherwise, we are afraid that the legal system in this province will become balkanized, will become regionalized to the point where we will be creating eight separate regions.

That is also true from a Divisional Court point of view. The legislation provides that the Divisional Court is to be regionalized. The Divisional Court will maintain the same jurisdiction as an appellate court. It is staffed by judges of the superior court.

We are concerned that to the extent that judges in one region sit on appeal from fellow judges in that region, there will be problems with the appellate structure. Therefore, we think it is extremely important that provision be made to move judges from region to region on the Divisional Court to ensure that judges do not sit in appeal from each other's decision in the region they are in.

This can be accomplished in part, and it is part of our submission, by allowing the Chief Justice the power to assign the judges in the Divisional Court. That power is there now under the Courts of Justice Act but has disappeared under the new proposed legislation.

Those are just a couple of points that are contained in our brief and that are extremely important with respect to this legislation; points which, in our submission, have not been dealt with or considered. It is another reason why this legislation should be further considered and discussed before being rushed through to passage.

I will turn it over to my colleague Harvey Bliss.

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Mr Chairman: Just before you do, it was interesting that you said that you were concerned that the increased monetary jurisdiction of the small claims court would be a disservice to the public. Is that because of the concerns about the paralegals getting in?

Mr Pattillo: No. I did not say that it would be a disservice. I think we have been advocating an increase in the monetary jurisdiction. I think the problem is the structure with which to handle it. Our position is that it is wrong to put it into the superior court; that it should be a specialized court which has been developed through the provincial court (civil division), and should be continued and expanded, with the use of deputy judges, to deal with it.

As an example, the cases will become longer if you increase your monetary jurisdiction. If that is the case, are you still going to get deputy judges who will want to do it if they are going to end up two or three days on a case maybe? It is not the increase in the monetary jurisdiction that concerns us; it is the structure that is proposed.

Mr Chairman: Okay. Mr Bliss.

Mr Kormos: One moment. I want to ask two questions. I appreciate that you said to wait, but you set up a little—

The Chairman: I was just trying to get clarification.

Mr Kormos: I know. I want some clarification too though.

The Chairman: We will try it.

Mr Kormos: Okay. In regard to this theme about this matter being rushed with undue haste, what I want to know is, is this the first opportunity that you have had to tell the Attorney General's office that you have not had enough time to adequately deal with the proposals? Mind you, there is the kicker there of the amendments. I am interested in—

The Chairman: I am sure that is a clarification you can get after Mr Bliss has wrapped up. We would like to let these gentlemen make their full presentation to us and then you can ask whatever questions you want. I think we agreed on that at the outset, Mr Kormos.

Mr Kormos: They nodded, so I presume that meant yes. It is okay. I will hold the second question. I appreciate your giving them a chance to nod.

The Chairman: We will wait with bated breath for you to ask that question.

Mr Bliss: On the last point on small claims, the bar association recommended an increase of jurisdiction to \$10,000. We certainly, and I think most members of the bar, favour an increase of jurisdiction of small claims as presently constituted, because the small claims procedure allows personal litigants to go into an office with trained personnel who are there to assist them to fill out forms themselves and to tell them to bring their bills. There is a special fast-track process for the individual personal litigant, and the

judges are trained to hear those kind of cases, to kind of envelop the people personally.

We are very much concerned that if that is just dumped into the general court and the litigants are forced to line up in the same line as clerks filing \$10-million claims and then are tried in the same court as people with \$10-million claims, you are losing all the benefits of a specialized small claims procedure. That was our point.

Governments for centuries have accepted the obligation of providing a justice system. It is the obligation of government to provide a forum for the resolution of disputes, both civil and criminal. If the government does not do that, you compel parties to go to private courts or there is chaos. You will drive both business and citizens away if you do not provide a proper system of dispute resolution through public courts.

Offices have evolved over the centuries within court systems to handle smaller and routine matters, including, specifically, small claims courts and judges, and masters, which exist in England and in other common law provinces, to deal with routine administrative matters. Those offices, the offices of masters and the offices of small claims judges, have evolved for very good reason, to provide expertise for handling smaller matters. Those offices have existed for centuries and continue to exist elsewhere, and there is no good reason to abolish them.

In a federal jurisdiction, the obligation to supply a court system is divided between the federal and provincial governments. These bills represent an attempt by the Attorney General to abdicate his functions, to get out of the justice business, to turn jurisdiction over to the federal government for monetary reasons, for budgetary reasons. These bills are budget-driven. The Attorney General admits this. He says, for example, that he is prepared to retain the office of master if the federal government will pay for it. So he does not propose abolishing the office of master as a matter of principle, only as a matter of money.

These bills represent a proposal which is not what is best for the citizens of Ontario, not what is just and not what is fair; rather, what is cheapest for this level of government. It has been done without consultation. The Attorney General is misled by his representatives if he believes there was consultation. What happened, in result, was a setup, a façade of consultation. The government and bar of this province have been sandbagged.

It feeds the talk that there was a hidden agenda. There was suggestion that there was a hidden agenda. The Attorney General vociferously denied a hidden agenda and then we see, for the first time in the bill, proposals that were never discussed. They might have been on the list of 100 possible alternatives, but they were not discussed. They were never put forward as a viable alternative. Neither the public nor the bar were asked to give their views. The first time those proposals appeared was without notice in the bill, the chief of which is triple merger, merger of three levels of the court.

There was no discussion of that very radical provision which does not exist elsewhere in this country. If such a radical proposal were to be made, warning should have been given; submissions should have been invited on that specific proposal. The bar association, in fact, recommended triple merger, but only in family law. For very specific reasons peculiar to the family law field, we did recommend one unified court to handle family matters, not civil and not criminal. Somehow, that was translated by the Ministry of the Attorney

General into a proposal for a merger in all three fields—civil, criminal and family—without discussion.

1700

That aspect, the merger of family law in a unified family court, now appears to be supported by the Attorney General, but for some reason that has been put off until phase 2, and we say for no reason. The one matter we are all in accord with, we say do now. There is no reason, apart from concurrence with the federal government and perhaps the other provinces—which we say is necessary now to avoid constitutional problems—to delay that. That is probably the most vital reform you can institute, and we urge you to amend this bill by requiring that unification of family law take place now in phase 1, not in phase 2.

We say small claims should not be unified, but that special court should be preserved.

Then we turn to criminal law. That is perhaps the most important aspect for many citizens in this province. Talk about time: That is the aspect that is really premature. That is perhaps the most complex field. We do not say that we either support or oppose a unified criminal court. We just do not know. That is really being rushed. That will require federal approval and probably concurrence of the other provinces; quite possibly, applying the principles of Meech Lake, unanimous concurrence of the other provinces.

Imagine what would happen if Ontario were allowed to merge its criminal courts and the other provinces were not. Imagine amendments to the Criminal Code providing for a unified criminal court for Ontario only. You are simply handing accused persons a section 15 argument. The equality rights granted under section 15 of the charter would deprive accused persons in Ontario only of the right to a trial in provincial court and appeal rights provided for from provincial court. What are the consequences of that? Quite possibly, it is unconstitutional. But can we really discuss it in the absence of concrete proposals for appeal provisions? Where are they? They do not exist.

One of the chief criticisms of the bills before you is what is missing. I do not see how you can deal with a reform of the trial court without at the same time dealing with a reform of the appeal court. What are the appeal rights? You are dramatically affecting appeal rights. Now you have internal appeals, you have appeals from district court to Supreme Court. Those appeals are disappearing because you are merging those two courts.

Where do the appeals go? Are all appeals now going to the Court of Appeal? The Court of Appeal cannot handle them. Is there going to be a proposal for an intermediate Court of Appeal? What jurisdiction is it going to have? In my submission, you cannot deal with half the apple; you have to look at the entire picture at one time, and that is a major flaw of this proposal. You cannot consider varying trial rights without considering what the effect on appeals is.

There have been pointed out to you many of the other constitutional objections such as making federal court judges out of provincial court judges, which is in effect what is happening if the proposal is that all the judges now become section 96 judges.

Mr Pattillo has dealt with the necessity, we believe, to deal with the constitution of Divisional Court, provision for rotation. What provision for

rotation will there be between the three courts? Is there provision for rotation between unified criminal court, unified family court and unified civil court? What is the proposal for rotation?

We have real concerns with the constitution of the management committee and the regional management committee. Even the amendment is a slap in the face to many of the organizations appearing here before you. From an initial proposal which gave the Attorney General the power to dominate the regional committees, we have an amendment which provides for representatives of the law society and the county and district associations, because the Attorney General was able to convince the county and district associations to support at least part of the proposal. That, in my submission, is at the least undignified.

The bottom line, Mr Chairman and members of the committee, is that while we support major elements of the proposal, there are major flaws. Do not be railroaded.

Mr McGuinty: Attention has been drawn to the lack of time to solicit and prepare adequate responses to the proposed legislation. In fact, how much time was allowed? Was it 1 May?

Mr Grenkie: The first of May was the very day the Attorney General called a group of the court reform into his offices, approximately a half hour before it was made public in the Legislature. That is the first time.

Mr McGuinty: I consider that to be a very serious aspect if it were interpreted as an effort to railroad through without adequate consultation with the legal community. Is that the interpretation on the part of the legal community?

Mr Grenkie: Every person can put his own interpretation on it. One of the concerns I have is that the Attorney General has already established and asked for a bar association representative on an implementation committee; he has already established that, and we have had one person attend one meeting of that already while this committee is sitting.

Mr Jarvis: If I may, sir, we have had our present system for about 100 years. When they have this one for 100 years—In that context, the time available is quite small.

Mr McGuinty: I do not find that argument very convincing in terms of legal jurisprudence or logic. There is a lot of things we have had for 100 years that perhaps should be replaced.

In the context of possibly interpreting an effort to perhaps rather impetuously accelerate this procedure, I thought the last comment of the last speaker was intriguing; he alluded to the undignified act of the Attorney General in soliciting a response from one part of the community. I think it was Mr Jarvis; you devoted your statement largely to a litany of events about the way this has been handled: the timing, the number of days, the fact that lawyers are on holidays, an aspect I find completely unmoving, the time to prepare an adequate submission and a lack of response in the community at large.

I am wondering if the lack of response from the community at large—I have to be careful here—is a function of the lack of time or due to the fact, as I have experienced after 31 years of teaching students of law, that we have a lot of lawyers out there in the field who are well trained in the trade of

law but not very much concerned about substantive questions of principle and the implications of this kind of proposed change over the goings on in the province.

Mr Henderson, a very good friend and colleague of mine for many years, referred to the constitutional matters and that he has not had time to deal with them. This is not a question so much as an observation. I am worried about that, the fact that the legal community, for a variety of reasons, be it indifference, holidays or timing, has not had the opportunity adequately to prepare a thoughtful and considered response. I think that is very unfortunate, because we have a phrase in politics that politics is not policies, politics is people. It is the lawyers out there in the profession who are really the ones best qualified to give helpful, useful information and insights into the implications in the practical order of these proposed changes.

Mr Jarvis, I did not really mean my reference to a litany of laments in a condescending or uncharitably critical vein, but it is an aspect of the situation that I personally find disturbing. I appreciated your bringing this to our attention.

1710

Mr Stradiotto: If I may, one aspect—

The Chairman: Mr Stradiotto, would you come up here? We have to pick you up on the mike or there will be a wide gap.

Mr Stradiotto: One aspect that I hope is not being ignored here is not only the question that we have not had a chance to consider what really came on us on 1 May, but we have collectively been working very hard over the past year and a half dealing with substantive reforms. Therefore we have not been sitting on our haunches doing nothing. We were directing our efforts to the reforms that were before us at that time. There are dramatic differences in what was announced on 1 May. If you take between 1 May and now to be adequate time to address them, I find that unrealistic.

Mr Grenkie: As well, one of the concerns about the management committee is that we feel it should be more advisory. I think this applies to the area outside Toronto, because we do have a system outside of Toronto which works very well at this time. If we are talking about management, then there is a danger that those areas that are now served by our courts might be closed down.

That is a very real fear I have, coming from Morrisburg. I would think the people outside of Sudbury, Mount Forest and Blenheim have all those same concerns for the existing courts. That is why we do not like the term "management committee." We do not appreciate the makeup of that committee. The fact that we are excluded and other legal organizations which represent lawyers throughout this province are excluded is not proper. We also feel it is not proper that the Attorney General or his representatives should chair such a committee from time to time. Those are real concerns we have on those advisory committees, that they should be advisory only.

Mr Stradiotto: I forgot to make one other comment. I was present at the first meeting of the court reform implementation committee, as were many others here. That meeting was chaired by the Attorney General. I specifically asked him whether that forum would provide an opportunity for the legal

profession to deal with some of its concerns about the substantive aspects of Bill 2 and Bill 3. He made it quite clear that it was not, that that was simply the forum to implement what had been decided in Bill 2 and Bill 3.

When I raised a couple of matters, such as the masters, he said: "The province has already made its decision on that. If the federal government will pay for it, fine. If not—"

So the implementation committee was not the forum to discuss that. I asked him where that forum was. He said, "You may have a chance to make some representations to this committee." That is why we are here. It is clear that that is not going to be a forum for ongoing discussion on these matters.

Mr Kormos: What kind of time frame would you propose, if there were to be one generated, that would provide for the consultation, consideration and preparation of submissions you speak of?

Mr Stradiotto: It is difficult to answer that. We thought we were well on our way until we had dramatic changes. If there are many more in the Attorney General's pocket, we do not know how much time it is going to take. We have to react to what happens when we are not told about it. Presumably, and I do not know if we have confidence in it, we have got all of the proposed reforms in his announcement and in the draft of Bills 2 and 3.

In terms of time, each one of us is here in sort of a representative capacity. We are discomfited to come here and voice our individual views when we represent large associations. We have to go back to our associations to vet what we are proposing in changes. I do not know if you are asking in terms of, do you want a month or do you want a year? We just want a chance to start the dialogue with the ministry on a sensible and timely basis.

Mr Kormos: The Attorney General is not here, but the parliamentary assistant is. I would like to ask him, what is going on? What gives? These people are here with these messages and I guess my question of the parliamentary assistant is: Is his recommendation to the AG going to be that there be a time space provided for the type of consideration and comments that these people are appearing to make or is it going to be full steam ahead?

Mr Offer: I would like to thank Mr Kormos very much for the question.

The Chairman: Did you plant it or what?

Mr Offer: No.

Mr Kormos: Not likely, Mr Chairman. I check my pockets every time I leave.

Mr Offer: I think the issue we referred to on the consultation is one Mr McGuinty might wish some clarification on and maybe some expansion from the members, because as I heard from Mr McGuinty's question to the presenters, he was asking basically: Was there consultation with respect to this particular initiative by the Ministry of the Attorney General?

I think in terms of the response it was almost as if there was but 30 minutes consultation. I do not think the members, even in their submission, have been very clear that it was not, that this is a matter which has been discussed with all of the representatives here, as well as many of the members of the Attorney General's staff, for many years.

I note in terms of a submission, Mr Kormos, I think that your question was dealing with the consultative effort and I want to deal with that at some length, but second, I want to deal with the whole question of, as I heard in three submissions, the word "rush."

First, to deal with the submissions, I note even in the final index, which has just been provided to me by the clerk from the Canadian Bar Association of Ontario—correct me if I am wrong in terms of the table of contents—in 1986 there were at least two submissions dealing with the Zuber inquiry and courts. In 1987 I see at least six submissions dealing with civil litigation response to the Ontario courts inquiry, criminal justice response to the Ontario courts inquiry, environmental law response to the Ontario courts inquiry, family law response to the Ontario courts inquiry, insolvency law response to the Ontario courts inquiry and response to the Ontario courts inquiry regarding courts. I see in 1988 at least two, the Joint Committee on Court Reform, courts, and the Joint Committee on Court Reform, report courts.

I think this is clear that in terms of this initiative, which is an important initiative, and I think that has been well made out, there has been a great degree of time and effort and thought and discussion which has resulted in a fair number of reports by the CBAO in the last couple of years.

We also know that this matter was brought in, I guess maybe it had its seed, in June 1986 with the appointment of Mr Justice Zuber in terms of the whole question of court reform. From that there was a great degree of consultation. There was a great degree of discussion between members, I would imagine, of the presenters here and the Ministry of the Attorney General, because this is an extremely important initiative by the Attorney General.

The staff of the ministry have worked long and hard in trying to make our court system one which is more accessible, is more understandable, and yes, it is the first major court reform initiative in over 100 years. That is not to say that there have not been some amendments, some changes on an ad hoc basis, but we are talking about something of a very fundamental nature. As such, in terms of such an initiative, there is the necessity for great consultation. That has happened in terms of the work done by Mr Justice Thomas Zuber and in terms of the work done by the Ministry of the Attorney General's court reform task force, which went throughout the province dealing with specific questions on merger and on other matters of interest to those who might very well be impacted by that.

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In terms of the consultation, I think there has been a degree of consultation in terms of court reform the likes of which we have never seen in the past. It has been in depth; it has been extensive; it has been ongoing. In terms of the implementation committee which is currently working on that—and to my left I have Craig Perkins and Doug Beecroft—those are matters on which there is a continuing degree of consultation between the ministry and those who have concerns or questions or comments.

In terms of the second question, and that is the whole issue of rush, as the member will note, this initiative, after such a great degree of consultation, was announced by the Attorney General (Mr Scott) on 1 May 1989. I am sure the member will be the first to acknowledge that there was, in terms of initial response, approval of this type of initiative by all three parties. Because of that, there was a second-reading debate, which again received approval in principle in terms of the legislation. In accordance with the way

in which legislation traditionally proceeds, this legislation was referred to this committee. This committee embarked on a degree of public consultation, and now, after the public consultation, I suggest, Mr Chairman, but I know that is your call, it is up to the committee in terms of how it is going to deal and order its own affairs and go through the clause-by-clause analysis of this legislation.

In terms of rush, I see none. I see only the usual course in which legislation has proceeded historically through this committee. It is a piece of legislation which, I am sure the member for Welland-Thorold (Mr Kormos) will admit, has to date received the approval of all three parties.

We have embarked on a consultative effort. We will, I suggest, probably be getting into clause-by-clause. The member for Welland-Thorold is well aware, and to the deputants—and that is important—it is within the ability of each committee to order its own affairs, and it will be within this committee's mandate to order its own affairs as to how this particular piece of legislation is going to be dealt with.

In terms of consultation and rush, I wanted to make those two points.

The Chairman: I am sure there will be some response from these gentlemen. Since we have only until 5:45 pm, I think I will let them make their response, and if there is time left over, we will have some questions.

Mr Kormos: I appreciate that. I did want to mention that Mr Offer's spiel reminds me—

The Chairman: You do not want to put more coal on the fire. Let's let these gentlemen respond to what was said.

Mr Kormos: I have to tell you it reminds me of an old Lennie Bruce joke. I will not tell you the body of the joke, but the punch line is "Somebody is not telling the truth here."

The Chairman: Perhaps you gentlemen would like to respond.

Mr Bliss: May I shortly deal with that? My good friend Mr Offer, in the best parliamentary tradition, has answered a question which was not asked and has not answered the one that was.

The question he answered is, was there consultation? The answer to that, of course, is yes. We have been working for two years and we have spent thousands of hours on the subject of court reform. That is the point Mr Offer dealt with, but it is not the point on the table.

The point on the table is, was there consultation on these key issues that came out of nowhere for the first time on 1 May? The answer to that question is no. Mr Kormos, that is the answer to that question.

His further question was, will there be further time granted to discuss those matters that came on the table for the first time 1 May? I suppose, inferentially, the answer from Mr Offer is no.

Mr Oatley: I will take 30 seconds.

The Chairman: Perhaps you could just swap seats, if we are going to get this in Hansard.

Mr Oatley: Just as we struggle to keep our sense of humour, it is a little bit like me talking to my wife during a long winter in Canada.

The Chairman: Be careful. We may send her a copy of this, too, so you want to be careful.

Mr Oatley: She would be interested.

The Chairman: All right.

Mr Oatley: —and the discussion is whether we go to Jamaica or Florida and we talk about this for three months. Then I come home in the spring and I say to her, "I got the tickets for our trip." She says, "Where are we going," and I say, "We're going to Iceland." She says, "How come you didn't talk to me about going to Iceland?" I say: "What do you mean? We talked about taking a trip for three months."

That is really the situation we find ourselves in.

Mr Grenkie: With respect to Mr Kormos' question as to how long it would take us to prepare, I would think by the fall of this year the practising lawyers would be able to get together. We have meetings. It is very difficult to get people on a volunteer basis. You have to remember that all our organizations here are volunteers and we volunteer thousands of hours. So it is almost impossible to get your volunteers to actively work in the summertime because they have commitments at that time to their families.

I would think by the fall of this year our volunteers would be able to get together, would be able to study these new implications in these bills that have been introduced to the Legislature and that are before you today, and we would be able to give this committee a proper response by that time.

The Chairman: Sometimes you come and we have to send you home pre-emptorily. I will be back to you, Mr Kormos.

Mr Kormos: Thank you.

The Chairman: Mr Kanter.

Mr Kanter: There were a number of substantive issues raised by various members who appeared before us, some of which I will want to pursue with the parliamentary assistant or ministry officials, but what I would like to do now is to ask perhaps Mr Grenkie or Mr Bliss some questions specifically about the Canadian Bar Association of Ontario representation that we heard before us.

I take it, Mr Grenkie, just addressing you as the current president, that while all members of the bar must be members of the Law Society of Upper Canada, you would be the largest voluntary association of lawyers in the province? Is that generally correct?

Mr Grenkie: I would believe so.

Mr Kanter: I want to compliment Mr Offer on the neat trick of using the CBAO submission, in a sense, against your interest, but I take it from the index you have presented and some of the comments in your brief that law reform, delivery of legal services, is pretty central to your organization's being and raison d'être, I take it.

Mr Grenkie: That is correct, in representing our members and looking at the public interest as well.

Mr Kanter: The third question may not be quite as much of a grapefruit or a lob, but there was some discussion about committees---an Ontario Courts Management Committee and some regional courts management committees. I notice there have been some changes. At one point the Attorney General was going to appoint them, and now I believe that various groups of lawyers are going to appoint them, or various legal bodies.

I heard some discussion, on the one hand, that you have some concerns about the speed with which we are proceeding; on the other hand, I heard some concerns about exclusion. I guess that was the word you used in your brief. I take it that your organization would welcome an opportunity to appoint representatives either to the Ontario Courts Management Committee or the regional courts management committee if such an opportunity were made available to you through legislation or some other means. Would that be your position? Would you be interested in doing that?

Mr Grenkie: Yes, very definitely. We also feel that we can get the various groups throughout the province together, and we can work out a formula that could then be the basis of that clause in the bill, because it is important that there be independent members of the practising bar who have an interest in that litigation-type field.

Mr Kanter: So that at the moment you are in support of the fact that lawyers should themselves appoint members, or many of the members of this committee, but you are not satisfied with the current allocation of membership on this committee.

Mr Grenkie: That is exactly correct. There has been an amendment, which we are aware of, but we do not feel the amendment goes far enough.

Mr Kanter: Those are the questions I had.

The Chairman: Mr Kormos.

Mr Kormos: I want to correct one thing that Mr Offer said, and I trust by mere inadvertence. Notwithstanding that there was, in the House, somewhat universal approval of the prospect of reform, that did not mean that there was universal approval of the legislation that was finally put forward in bill form.

Indeed, from the very onset of this committee's consideration, very learned sources suggested that the legislation was inherently unconstitutional. Indeed, it has been suggested now that notwithstanding these ad hoc---because people like you might call them knee-jerk---amendments, the concern about the constitutional validity remains.

The committee has also been told about the chaos and expense and time that would be inherent in constitutional challenges in a variety of forums to the legislation if it were approved at this point.

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Now we hear some further concerns, some perhaps far more practical, down-to-earth, less esoteric ones about the abolition of certain functions, certain roles. It is suggested that this committee is embarking on public

consultation, but that is exactly what these people are telling you: that you are not going to get the public consultation until they get the opportunity to discuss the matter with their memberships and, among other things, weigh the effect of the impact of these knee-jerk amendments that have been put forward only in the very recent past.

Mind you, I appreciate that this is not unprecedented, Mr Chairman, because this whole grievance is so timely. You thought the business about the paint job was cute; this whole business is so timely because, as you well know, it is hard to find a sole organization, group, trade union or injured workers' movement in the province that was consulted on Bill 162, notwithstanding—

The Chairman: I think we will have to stay with this one. We have enough on our plate without getting into Bill 162.

Mr Kormos: —notwithstanding that the Minister of Labour (Mr Sorbara) persists in insisting that there was consultation. Similarly, it is hard to find a single instance in the matter of Bill 162 where the government was at all responsive to any of the suggestions of affected persons, as these people represent.

So what I have is a motion that reads, "I move that the committee"—I am referring—

The Chairman: Are we going to ring the bells again to get that motion going?

Mr Kormos: That is a maybe.

I move that the committee's consideration of bills 2 and 3 be deferred until the next session so that interested and affected parties may have appropriate time to consider the impact of the proposed legislation.

I am going to give that to the clerk, Mr Chairman. I am not vacating the floor.

But there it is and I am hard-pressed to understand how that could not be in order. You have a wide cross-section of representation here from the whole province. These are the people who, quite frankly, as has already been suggested by more than a few commentators, know best. That does not mean that the government is going to necessarily fall in line with everything they propose, but for God's sake, it is about time the government indeed took seriously the matter of consultation with the affected parties, with the stakeholders, if you will.

This legislation has already received some pretty profound criticism by a group of Supreme Court judges. Surely they are not to be regarded as pikers or as lightweights in the total scheme of things. And you are not dealing with pikers here.

It would be an insult to each and every one of these organizations not to accede to what I have inferred is something of a plea for just a little more time. These people are not trying to obstruct the legislation. They have all indicated that they are as favourable as we in the opposition are to the prospect of court reform. But they want it done in an intelligent and careful manner, not in some sort of rhetorical preprinted Kiwanis Club speech manner, which is the yolk of what we are getting so far.

That is about where we stand. This committee has the opportunity to either put these people in the same class as injured workers and trade unionists across the province with respect to Bill 162, or has the option to give effect to a whole lot of hard work they have done already and ensure that that hard work has some impact on what this committee ultimately decides and on what the House ultimately decides.

The Chairman: Mr Kormos, the authority that was given to us by the House leaders, as I construe it, since I asked for it, was simply to hear representations—in fact, there is not a member here from the third party—not to take votes. So I am going to take your motion as notice. We are sitting again tomorrow and at that time hopefully the bells will not be ringing and we will be sitting in a proper fashion.

Mr Kormos: You are not nervous about the small number of Liberals who happen to be here, are you?

The Chairman: No, not at all.

Mr Kormos: I would not think so.

The Chairman: That is the approach I would take. I am now going to let Mr Offer have a few questions, if he has questions of the deputation, because we are fast approaching when we are going to have to leave here to take a vote.

Mr Kormos: On a point of order, Mr Chairman: He is going to ask these guys questions for 10 minutes and then he is going to be telling the whole world for the rest of his political life that he consulted with them.

The Chairman: If that is a point of order, then the rules have changed substantially since the last time I looked at them. Go ahead, Mr Offer.

Mr Offer: As a preliminary matter, one of the points brought forward by Mr Kormos was my discussion and assertion of the approval of the opposition and third party on second reading. Of course, as I think Hansard would bear out, I indicated that was approval in principle. We all know that only speaks to the approval of the bill in principle and nothing more.

The question I would like to ask the deputants is an important question, because I know this is a matter in which they have a great deal of expertise, and certainly opinion on. It is a matter they have discussed among their particular associations as well as, I would imagine, with ministry staff in the past.

I would like, if I might, to get your position with respect to the benefit that a merger situation would have in the court system. This is a matter you have discussed in the past, and I think it is important that we get your reaction to this whole question of merger, in the time permitted.

I note there has also been the issue of small claims court and the whole question of the increase of jurisdiction, which has been discussed by yourselves and the associations with many persons in the past. Again, I would like to get your consideration as to the monetary jurisdiction of \$5,000 and how that may work in keeping the small claims court a people's court on the one hand, yet on the other hand coming to grips with the increased monetary jurisdiction as proposed in this initiative.

Mr Bliss: I think we have dealt with those matters already. All the organizations here represented, except for the Advocates' Society, favour merger of the Supreme Court and the district court. We also favour merger of all three courts in a Unified Family Court.

We oppose merger of the small claims court. We say that should be kept a special people's court, and not just at \$5,000 but up to \$10,000. We think that court should be expanded and has a very useful role and should be preserved, not merged into one big court.

As to merger of criminal law, the jury is still out. That is the major area where much further discussion is needed.

Mr Grenkie: As for the small claims court, we have to remember as well that outside Toronto there is a jurisdictional limit of \$1,000, which is extremely repressive on those citizens who live outside of Toronto. Otherwise, you have to commence your actions in district court. The cost is just too great because of the documents you have to file and the procedure you have to go through. The sooner there can be one level of jurisdiction of small claims court throughout Ontario, the better.

Mr Stradiotto: In terms of the Advocates' Society's position, we were unique, as it stands out, in opposing the merger, but we are also unique in that we are the only association made up of experienced trial counsel. We do not have the real estate, the tax and the corporate people who have never set foot in a courtroom. Our association is made up of only experienced trial advocacy counsel. We are not ashamed that we stand unique in that position.

For a moment, let me just add that our concerns, as I have attempted to express them in my verbal presentation and in the excerpt from our brief, we hope can be addressed in a proper merger.

We have not abandoned our position that we do not think merger is the way to go, but if merger is going to happen, let's do it right and let's preserve the good aspects of what the distinct Supreme Court stood for. In that respect, we are joined by all the other associations. They also, like us, do not want to see the province balkanized and judges permanently ensconced in a region and running that region alone. They had spoken to that, consistent with us, and that is why we joined the joint reform committee. There are aspects that can well be preserved. Bill 2 and Bill 3 do not deal with them satisfactorily at all.

The Chairman: We have a few minutes left. Does anyone want to fill the gap?

Mr Kormos: You can deem something, Mr Chairman. You guys have been deeming everything left and right for the last—

The Chairman: This is a very important issue and maybe we should keep it, if we can, on a nonpartisan basis, because it does have some importance to this province, the judicial system and the justice system.

Mr Kormos: I am sorry, Mr Chairman.

Mr Offer: I think the point to be made about the small claims court is, first, that it is the intent of the legislation that it does remain a people's court and, second, that one of the concerns about jurisdiction is that if it were raised to \$10,000, for instance, it may move away from the

people's court aspect. As to the response that was made, I think we are on the same path, of making certain the small claims court does remain a people's court, an expeditious, inexpensive way in which to resolve disputes. This legislation is designed not to detract from that. One of the concerns about the monetary jurisdiction is that if it is made too high, we might move away from that.

However, as you well know, that is going to be set by regulation and that will permit an ongoing monitoring to see whether such jurisdiction is in keeping with the people's court aspect. But I do appreciate the response which was given and thank you very much, all of you, for your submissions and your deputation today.

The Chairman: I would like, in the few minutes left, to thank you gentlemen not only for appearing today but appearing last Tuesday or Monday, whenever it was. Certainly your time and your investigation in offering it to us is appreciated.

This bill is slated for clause-by-clause, actually, today and tomorrow. If the committee decides to do that—it is up to them—even if it goes back into the House, it will go into committee of the whole House, and that will probably not take place until next session. It depends on what the House leaders do, and there will still be an opportunity to present further information.

We appreciate the information you have given us here today and appreciate the importance of the issue. It is probably one of the most important initiatives that will take place.

I want to thank you. Again, I thank all the House leaders of all the parties—because this really should be a nonpartisan issue, because it is that important—for allowing us to carry on, even though the bells are ringing. We stand adjourned until after routine proceedings, or whenever, tomorrow.

The committee adjourned at 1744.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE AMENDMENT ACT, 1989

COURT REFORM STATUTE LAW AMENDMENT ACT, 1989

TUESDAY 18 JULY 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Also taking part:

Roberts, Marietta L. D. (Elgin L)

Clerk: Arnott, Douglas

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service

Schuh, Cornelia, Deputy Senior Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 18 July 1989

The committee met at 1543 in room 228.

COURTS OF JUSTICE AMENDMENT ACT, 1989
(continued)

COURT REFORM STATUTE LAW AMENDMENT ACT, 1989
(continued)

Consideration of Bill 2, An Act to amend the Courts of Justice Act, 1984, and Bill 3, An Act to amend certain Statutes of Ontario Consequent upon Amendments to the Courts of Justice Act, 1984.

The Vice-Chairman: I recognize a quorum being present and representatives being here from the three parties. We will proceed with this particular meeting of the standing committee on administration of justice.

For the record, there are two matters of correspondence which are being tabled to be recorded as exhibits, one being a letter received from W.L.N. Somerville, QC, and the other a letter from Earl J Levy, QC, president of the Criminal Lawyers' Association of Toronto.

I understand that Mr Kormos has a motion that he wants to make to the committee. I wonder if Mr Kormos would proceed with that motion.

Mr Kormos: Indeed, I appreciate the assistance that the chairman provided because the motion was poorly worded and did not in fact reflect what I intended to move. I thank you for that.

The Vice-Chairman: Can I interrupt you just for a minute? Can you hear him on the other side of the room?

Miss Roberts: Yes quite well, maybe too well.

The Vice-Chairman: Mr Kormos moves that the justice committee's consideration of Bills 2 and 3 be deferred until the fall sitting of this session so that interested and affected parties may have appropriate time to consider the impact of the proposed legislation.

Mr Kormos: Interestingly, a letter from Earl Levy, Criminal Lawyers' Association, is in line with much of what was said by persons appearing before the committee yesterday.

A couple of similarly interesting things, because when the bill was first spoken of back on 1 May 1989, among other things, it was said by the Attorney General (Mr Scott):

"Those who have been consulted and worked with us—the judges, the crown attorneys, the lawyers and the members of the public—clearly recognize our goal: the creation of a structure which would facilitate the administration of justice in the province not only in this decade, but well into the next century."

It is interesting because the people who were appearing before the committee yesterday did not dispute that there had been a lengthy period of consultation and input on their part into the general concept of reform, but none of them—and we are talking about people representing the Canadian Bar Association of Ontario, the Advocates' Society and some joint representation, the Advocates' Society and Joint Committee on Court Reform—would confess to having participated in the preparation of the legislation itself. Yet an almost universal comment across the board was that some concerns were echoed.

One was the concern about the constitutionality of some of the facets of the legislation, particularly as it applied to court merger. Interesting comments were made about the role of masters and certainly contrasted with what had been said the last time we met about the need for masters. As I say, there were some interesting comments that are perhaps thought-provoking at the very least, especially among—and it is cited often here that many of the people on this committee are lawyers. But it is thought-provoking for some of us who have never had occasion to work in areas of law that involve masters, for instance.

So there you go. You have an allegation. In view of what we have heard, it really cannot be anything more than that. Those who have been consulted and worked with us, the judges—the judges are the ones who retained counsel who did some lengthy research and wrote some lengthy material for this committee—are very concerned about the constitutionality.

Crown attorneys, the lawyers—they are the ones who appeared here yesterday saying, "Sorry, we may have been involved." The CBAO referred to its lengthy history of submissions to various bodies in position papers and conceded quite readily, "Sure, we have done a whole lot of submissions and a whole pile of things," but it very specifically rejected any proposition that there was consultation on the bill itself.

Mr Offer made himself more precise than he had been when he initially stated it, but it remains. None of the people who appeared yesterday, nor the Supreme Court judges, are suggesting that the prospect of reform is an unattractive prospect. They are concerned about the manner in which it is performed.

The other consistent theme yesterday was that this whole matter—first time in the House 1 May, second reading 14 June, here we are now into mid-July, appreciating that—but for virtually none of them was there sufficient time to deal with the bill, not just with the prospect of reform but with the bill itself and a consideration of it among their memberships and perhaps a refinement of that consideration, leading to a submission to be made to this committee. None of them conceded that there had been sufficient time to do that, least of all when there were a whole pile of amendments made to the bill, which were thrust upon them at virtually the last moment.

That position is reinforced once again, as I have indicated, by the letter from Earl J. Levy, president of the Criminal Lawyers' Association, who writes:

"I regret that the time frame for any response by the Criminal Lawyers' Association as set out in your letter of June 23 is impractical. This matter would have to be discussed before our governing body, a number of whom are not available during the summer period. Even if available I doubt very much that we could meet your time requirements."

Once again, these people, the Peter Jarvises, the Harvey Blissess, the

Earl Levys and so on, are not irresponsible people. They are leading members of the bar. Surely no one is going to speak ill of the Supreme Court judges who made their submissions through their counsel at least in part. These are leading members of the legal community, whose input into the process of the legislation could be extremely valuable.

1550

It was said by persons appearing before the committee, "We are talking about reforming something that has been around for 100 years and the reform will probably be in effect for the next 100 years," and that is exactly what the Attorney General suggested because he talked about structure which would serve well not only in this decade but well into the next century, about reworking and remaking something that is expected to be around for a long time.

If there is going to be true, meaningful consultation with those people who know best—and I speak of members of the bench and organizations like the Advocates' Society, the Canadian Bar Association and the Criminal Lawyers' Association—surely it is naïve to suggest that these people are not so intimately and thoroughly involved that their careful consideration of the proposed legislation and the comments on it would not be extremely valuable, especially in view of the fact that it is done, as far as this committee is concerned, virtually for free.

To reject that would be grossly irresponsible. Again, clearly the motive of these people in stating their position is not for the purpose of delay. Once again, virtually all of them uniformly agreed that reform was desirable. They indicated that but a short period of time would be necessary to respond to the bill as amended.

It is for that reason that I appreciate the assistance that I got in wording this motion because for me to have suggested that it be deferred until the next session may have appeared to be an effort to prolong the matter; but indeed what I intended was merely to the fall sitting. We are talking about a relatively brief period of time, which, those organizations indicate, will enable them to distribute the material, consult with their memberships and address their minds to the issues.

We are dealing not just with the sensitivities or not hurting the feelings of Supreme Court judges who might find themselves merged with district court judges, or what have you, but we are talking about some extremely important issues. We are talking about a couple of months' time whereby litigants and the system could be saved a great deal of grief and expense down the road.

One of the big caveats, just to show that I was called to the bar at one point in my life, that was raised was the matter of the constitutional test that the bill is going to have to withstand. It was commented that some of the amendments—certainly not all of them, but at least some of them—were designed to counter some of the criticism of the constitutionality of the legislation. That has not been thoroughly analysed.

I appreciate that Mr Callahan elicited a letter from Mr Robinette, wherein Mr Robinette indicated that he would be unable to attend, once again because of his vacation schedule. That is one of the rationales that these groups give for not being able to make meaningful submissions, because among other things, in the summertime people are hard to be found. They have commitments that were probably made a long time ago, and rightly so.

The motion is made to ensure—and once again, if Mr Offer did not say it first, I did or at least I would have—that is to say that all parties responded to the announcement of the pending legislation with a positive attitude. Both the opposition and the third party recognized, along with the government, as had almost all of the persons or groups making submissions, that reform is desirable.

That is not the point. The point is that some people far more profoundly affected and far more intimately familiar with the issues that will be raised by the bill and the legislation have indeed raised red flags. I submit that it is incumbent on behalf of the committee, if it is going to be responsible, those people having said, "Look, under the circumstances, 1 May to 14 June really is a relatively short period of time," especially in view of the size and scope of some of these organizations and the fact that they are at least province-wide, the only responsible thing to do is to permit deferral.

Among other things, the cases that were referred to in the letters written on behalf of the Supreme Court judges may well be read by the members of the committee then. I have not been able to read all of them—I know Mr Polsinelli probably read that British Columbia decision—but I suspect that not a single member of this committee has read the decisions that were referred to in the correspondence on behalf of the Supreme Court judges.

These people are talking about saving the community and saving the government time, money and grief in the long run. To defer this matter a couple of months now is the smart thing to do, and it does not represent obstructionism, it does not represent an overall critique of the thrust or general intention of the legislation, but says that if you are going to build something that is going to last 100 years, that is going to last a century, you use caution and you call upon all the resources that you can possibly use when you build it.

There are people here prepared to offer their assistance, prepared to offer constructive criticism and wise advice. If we do not defer the matter, what we are basically doing is shutting the door on them, making a lie out of any prospect of being able to claim that there had been consultation and surely shortchanging ourselves and the community.

The Vice-Chairman: Do any other members of the committee want to debate the motion?

Mr Polsinelli: I was going to ask Mr Offer, as parliamentary assistant to the Attorney General, to comment on Mr Kormos's motion. With respect to his comments, I wish he would also address whether he feels that the delegations yesterday, after having attended this committee a second time and having submitted their briefs, if this motion were accepted by this committee, would be prepared to go back and update their briefs or do new briefs.

Mr Offer: I would like to comment on Mr Kormos's motion. As a preliminary comment to Mr Polsinelli's question as to whether the groups yesterday would be prepared to update their briefs in whole or in part, that is something that I certainly cannot provide an answer to. It is something that only those groups would be able to respond to.

In speaking against the motion by Mr Kormos, I would indicate at the outset that much of what Mr Kormos has indicated in terms of the argument is not to be taken at issue. In terms of the announcement on 1 May by the

Attorney General being the first real overhaul of the court system in the province in over 100 years, that is without disagreement, of course. In terms of the initial reaction by the opposition parties to the announcement of 1 May being in support of the initiative is, of course, also not to be disagreed with, and also the agreement in principle by all parties in the Legislature on second reading is of course without contest.

We stand as one on that case, because I think what we are dealing with here in a very real sense is a matter that has the potential to live on much longer than any of us here. We are talking about a fundamental overhaul of the trial court system, not on an ad hoc basis, but in a very real sense, one which, as has been indicated earlier, has not taken place in over 100 years.

1600

If I might say why I speak against the motion, the first point I would like to make is that the legislation before the committee is the culmination of a number of years of consultation. It is not legislation or an initiative which has just fallen out of the sky and been foisted upon members of the bar, members who are intimately connected with the judicial system, but rather is the culmination of a great deal of discussion and ongoing consultation for a number of years.

I think the first consultative effort was through Mr Justice Thomas Zuber, who was charged with the responsibility of looking at court reform, an overhaul of the system, and that was done through questions and consultation on his part. It ended in a report which he authored, which was made up of his analysis of the court system with other groups throughout the province.

The second area was the response, reaction, impact, call it what you will, of his report on the court system in the province. That, too, was done with most if not all of those persons who are intimately connected with the court system.

The third aspect was the striking of a task force through the Ministry of the Attorney General, the court reform task force, which spoke for a great deal of time, specifically with members, in terms of areas of discussion: increasing the jurisdiction of small claims court, the merging of the district and the Supreme Court, issues dealing with the masters, dealing with all of the things found within Bill 2.

This legislation is the end result of a great deal of consultation. It might be the position of others that this type of consultation is not right because they did not see the bill until 1 May. My response is that that is probably the responsibility, the duty and the obligation of government: after having consultation, after listening to comments and concerns on different issues, to frame a piece of legislation. It is the responsibility of the government to do so, and that is what took place in this case.

Following that announcement of 1 May and the introduction of the legislation, we have had second reading debate, we have had advertisement, which I think the clerk might wish to explain to the members, but all members know this was advertised. As a result of the advertisement, we have at hand some very in-depth briefs.

I find it somewhat interesting that those come before the committee saying, "We have not had time to respond to the legislation" on one hand, yet on the other hand provide in-depth briefs; such as the Joint Committee on

Court Reform, such as the Canadian Bar Association, such as the County and District Law Presidents' Association. I do not know if one can say one has not had time to respond to the legislation while on the other hand provide briefs of a great degree of research and reaction to the legislation.

I find it difficult to reconcile those particular positions. I could see it if someone said, "I have not had time to react to the legislation," and had not provided any brief. I can understand that. To say you have not had time to respond to the legislation and on the other hand provide exhaustive reaction to the legislation is something I find difficult to reconcile.

The response of the committee to Mr Kormos's motion will be up to it, obviously, but I believe that those groups before us have had ongoing consultation on the initiatives by the ministry for a number of years, that subsequent to the introduction of the legislation they had, by their own submissions provided to this committee, time to react to the legislation.

I think that on all of those counts we are charged with the responsibility of listening to those that come before the committee, hearing their concerns, reacting to their concerns and then proceeding with the legislation.

We have been provided with valuable information by the County and District Law Presidents' Association, by the Joint Committee on Court Reform and by the Canadian Bar Association. We have heard submissions by Dr Baar. We had some fruitful discussion yesterday with some of the leading practitioners in the area, and now I think it is time for this committee to deal with the bill. We have had the public consultation. People who wished to come forward have come forward, and it is now at that stage where we are going to say: "Yes, we have a fundamental change in the court system being proposed as founded within Bill 2. Are we prepared to deal with it?"

Through the number of years of consultation which has come forward, this committee has been charged with that responsibility and I would hope that all members would vote against the motion on that basis. I hope they vote against the motion because of their willingness to meet this particular challenge, to meet the initiative of 1 May as found within Bill 2. That is all I have to say about the motion.

The Vice-Chairman: Do any other members wish to comment on the motion?

Mr Polsinelli: I would simply like to state that I was teetering on this motion and Mr Offer definitely convinced me to support his position on it.

The Vice-Chairman: That is a very nice noncomment. Thank you. Mr Kormos, do you have further comments to make?

Mr Kormos: If it is the theme of the government that it is not interested in what these groups of, as it was pointed out, leading members of the bar had to say about the legislation in bill form, then I suppose one would have to ride along and do as suggested by the parliamentary assistant.

At the same time, though, one wonders what the urgency is. The clear message from those before the committee yesterday was that a couple or more months' time would permit them to read the bill as amended and make more meaningful comments to this committee as to the anticipated impact of that legislation. Mr Offer is suggesting to hell with them.

The Criminal Lawyers' Association wrote a letter saying, "Sorry, no can do," in terms of the time frame suggested. Mr Offer seems to be saying, "Well, okay, Mr Levy, in that case we're not overly satisfied that anything the Criminal Lawyers' Association could tell us would be all that valuable to us, because, after all, we're the government and it's incumbent upon us to make that decision."

1610

The Canadian Bar Association—Ontario says, "Please, we've had a great deal of difficulty getting an opportunity to consult with our membership, especially on the bill as amended." The Canadian Bar Association: What more long-time and august group of members of the bar? I suppose the government is going to say: "To hell with them, we're not all that interested in hearing what they have to say. They can be set aside," yet the government is going to persist in saying that there was consultation.

There has been no consultation on the bill in its drafted form. That is clear. The government has obviously already made its decision about what it wants. Whether it is a mere matter of egos that prevail and say, "No way are we going to accept criticism about something that at first glance we thought seemed just fine," or whether it is a matter of design will probably never really be known.

I feel really saddened that the parliamentary assistant would take the position that this thing has to be forced ahead notwithstanding the position taken by interested groups who have a great deal to offer to the process, and notwithstanding that what is being sought is a couple of months so that these people can respond.

This government has managed to alienate a whole bunch of other groups of people in our province. It has managed to piss off the doctors, it has managed to really piss off Queen's counsels and now it is thumbing its nose at leading—

The Chairman: I do not think that is parliamentary language.

Mr Kormos: It is hard to call it anything but.

Now it is managing to tell leading members of the bar that they can go pound salt, that the government is not at all interested in hearing what they have to say about very important legislation. The government is not going to heed the warning given to it by Supreme Court judges in Ontario, and it is not even going to bother to give leading members of the bar—the Advocates' Society, the Canadian Bar Association, the Criminal Lawyers' Association—an opportunity to comment on the legislation.

I do not know who is left. I guess the next round of bills and the next round of affected parties will reveal that. Talk about a way of eroding a constituency. I suppose it makes it easier to count votes when they can be counted in double and triple digits as compared to any bigger numbers.

But what an irresponsible and indeed arrogant position to take. I suspect that Mr Offer—I appreciate that being parliamentary assistant is difficult at best; perhaps that is the way it should be if you are parliamentary assistant as compared to a mere backbencher—is doing what he was told to do, because if he does not do what he is told to do, then he is no longer a PA and the future may not be as optimistic as it would appear to Mr Offer now.

But it remains that while Mr Offer has something at stake here—he can be replaced and he knows that; he has to toe the line, he has to do what he is told—the other members of this committee, by and large, should be free agents. They do not have, by and large—some do—parliamentary assistant positions. Somehow, they are prepared to toe the line at the same time, without any rhyme or reason.

What a disappointing start to what could have been a really historic venture on the part of this government, perhaps one of the few things it could have been remembered for in a positive light; indeed, what could have been a bit of bright light in a gloomy era for this government, something about which they could have been proud, and something—

Mr Mahoney: Bob just sent you your orders.

Mr Polsinelli: It was Gord Wilson.

Mr Kormos: Neither Gord nor Bob say Pete.

—something about which they could have been proud, and something about which the community, especially the legal community, could have said, "That wasn't a demonstration of arrogance and heavyhandedness; it was a demonstration of a willingness to participate with the affected and interested parties and arrive at not just a good or even mediocre proposal but one that is outstanding."

I am afraid that without the input that has been offered from the groups that have been spoken of, what we will be left with, at its very best, will be mediocre and nothing about which any of us can feel pride.

I regret the comments of Mr Offer. I understand why he made them, but I feel saddened at the prospect that the five Liberals here will vote against this motion, deny this participation, and in effect really deny a process that could be democratic but, by virtue of the position taken by the parliamentary assistant, is not being very democratic at all.

Mr Chiarelli: Why take the vote at all if it is not democratic?

Mr Kormos: Mr Chiarelli says, "Why take the vote at all?" and that is the attitude of the Liberal government.

The Chairman: We did not hear him, Mr Kormos. You are finished, are you?

Mr Kormos: That is why I repeated what Mr Chiarelli had to say: "Why take the vote at all?" That is the attitude. It is as if the voting and the debating is just a little nuisance. It is these little mosquitoes that come in through the holes in the screen; they are a nuisance you try to get rid of.

Indeed, that is what is happening in the Legislature this very afternoon. There is a heavyhandedness, an arrogance and a denial of democratic process. I guess the only bit of candour we have had is Mr Chiarelli acknowledging, with his hands thrown up, "Why take the vote at all?" because it really ends up being so meaningless: The seals flap their flippers and balance the red ball on their noses, and it is done and over with. So be it.

Mr Chiarelli: I want to clarify what I said before. I think Mr Kormos totally misunderstood my comment. I was referring to the fact that he

had his hand up, pointing, counting heads, anticipating that the vote would be five or six to one, implying that that would be undemocratic.

Because there happens to be a majority in this particular committee does not demean the committee. The vote ought to be taken, and if there happens to be a minority side in the vote, so be it. But I think it would be very incorrect for Mr Kormos to suggest that because there happened to be five, six or seven people he anticipates to be voting in a particular way, that is undemocratic.

1620

The Chairman: It is probably incorrect for all of us to be doing that. The vote will tell how the vote will go.

Mr Chiarelli: That was the intent of my comment. It was not to say that the vote was a foregone conclusion. Far be it from me to suggest that the votes on this side would be a foregone conclusion. As Mr Kormos knows full well, in committee deliberations, this side has frequently voted different ways.

Mr Kormos: Mr Chiarelli was quite careful to indicate that I did not state but rather, as he put it, I implied. I suggest to you that he very faultily inferred; if he wants to draw stupid inferences, that is his business, but he should be careful about drawing inferences when they are unfounded. The fact is that he infers and cannot quote me. I can and I have, and the record will show that.

The Chairman: All right. Let's find out what the vote is. You are all familiar with Mr Kormos's motion.

Mr Mahoney: Recorded vote.

The Chairman: A recorded vote is asked for.

The committee divided on Mr Kormos's motion, which was negatived on the following vote:

Ayes

Kormos.

Nays

Chiarelli, Kanter, Mahoney, McGuinty, Offer, Polsinelli.

Ayes 1; nays 6.

Mr Chiarelli: Now, that is truly democratic.

Mr Kormos: Stalin ran a democratic Parliament, too.

The Chairman: Mr Kormos, I do not know to whom you are referring, but that would be unparliamentary. Who are you referring to as Stalin?

Mr Kormos: There is only one historic Stalin. People confuse Lenin—John Lennon with Nikolai Lenin.

The Chairman: All right. We have before us a consolidated bill with all of the amendments contained therein. We also have the unamended act with the amendments. We need unanimous consent to deal with the consolidated version. Is there unanimous consent to deal with the consolidated version?

Agreed to.

Mr Kormos: I indicated to Mr Offer that I was prepared to do that, and I remain prepared to do that.

The Chairman: I understand Mr Runciman, as well, has given his consent to our using the consolidated version. Thank you very much, Mr Kormos.

All right. Dealing with the consolidated version of Bill 2, are there any amendments other than those already contained in the bill. If so, to what section?

Mr Offer: We have had distributed three further government amendments to the legislation.

The Chairman: Is Mr Kormos coming back?

Mr Offer: I am not certain. We have three government amendments which we have distributed to the clerk.

The Chairman: What numbers are they?

Mr Offer: They would be to sections 15, 16 and 17.

The Chairman: All right. There are no amendments before section 15. Are there any comments on sections 1 through 14 of Bill 2, as amended?

I would like to know whether Mr Kormos is coming back. I do not know whether he has left. If he is coming back, I will wait until he comes back.

Mr McGuinty: He took his papers with him.

Mr Mahoney: Did the opposition parties say we could proceed without them?

The Chairman: I am not sure. I want to be certain of that. Maybe the clerk could check to see if Mr Kormos is gone or if he is coming back.

Mr Mahoney: Is this his method of ringing the bells? I think it is an important point. Did Mr Runciman agree that we could proceed in his absence?

The Chairman: I have a note here. I have to ask Mr Chiarelli. Did he agree that we could proceed with clause-by-clause in his absence?

Mr Chiarelli: He made no comment about that. He simply indicated that he would agree with the unanimous decision to incorporate the amendments in the consolidated version of the bill. He did not comment on any other issue.

The Chairman: I think we should have clarification of that, too, because I am not interested in having it said afterwards that we have gone too far. Maybe we should adjourn for five minutes and that will allow the clerk an opportunity to check that out.

The committee recessed at 1625.

1644

The Chairman: We are back in session. I have a note from Mr Kormos that tells us we may proceed with clause-by-clause as if he were here. I understand that Mr Sterling has indicated verbally that we cannot. I will be guided by the committee's decision, but I think it would be unwise to proceed in the absence of members of the opposition.

Mr Chiarelli: I would like to make a comment on that. I had a discussion with Mr Sterling, and he indicated to me during the recess period that he was not inclined to proceed today, because certain submissions were recently made and he did not have an opportunity to study same. Otherwise, I understand that members on this side are prepared to proceed.

Given Mr Sterling's position, I would like the record to show that he has indicated to me that he did not want to proceed today, that he wanted to apprise himself of the submissions which were recently put to the committee. I would ask the clerk to provide Mr Sterling with a transcript of my statements, at least, that I am prepared to move that we proceed next Monday, assuming we are sitting next Monday and/or Tuesday, and that in my opinion the intervening week should provide him with sufficient time to study any briefs which have been received until today. I think it will be out of order for him to ask for additional time after Monday.

The Chairman: I do not think you need a motion, if there is unanimous consent. I understand Mr Kormos—I do not know how he would be voting, because he said, "Proceed as if I were there."

Mr Chiarelli: Mr Sterling did not indicate that he would be prepared to proceed next week. I am simply putting my comments on record so that if Mr Sterling attends next week and asks for additional time, I would like the record to show that in my opinion he be advised that one week should be sufficient time for him to brief himself.

The Chairman: I do not really think the committee has the power to tell any member that they have to proceed in that fashion.

Mr Chiarelli: It is on record. That is all I want.

The Chairman: It is on record.

Mr McGuinty: I would like the record to show also that this committee does not respond to what appears to be a casual comment by one member of the committee to another member of the committee. Whether Mr Sterling is speaking on behalf of his party we do not know. We do know that if Mr Sterling wanted to register that concern, he should have done it formally with our chairman, who could take it into account.

I would simply dismiss Mr Sterling's comments to my colleague, at this time and in this context, as irrelevant.

Mr Polsinelli: Mr McGuinty's comments are on the record, and Mr Chiarelli's comments are on the record. I think it is appropriate that I move adjournment at this time.

The Chairman: That is probably the best thing on the record.

The committee adjourned at 1648.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE AMENDMENT ACT, 1989
COURT REFORM STATUTE LAW AMENDMENT ACT, 1989

MONDAY 31 JULY 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

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Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Black, Kenneth H. (Muskoka-Georgian Bay L) for Mr Mahoney

Kozyra, Taras B. (Port Arthur L) for Mr Kanter

Pelissero, Harry E. (Lincoln L) for Mr Chiarelli

Clerk: Arnott, Douglas

Staff:

Baldwin, Elizabeth, Legislative Counsel

Evans, Catherine A., Research Officer, Legislative Research Service

Witness:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 31 July 1989

The committee met at 1409 in room 151.

COURTS OF JUSTICE AMENDMENT ACT, 1989
COURT REFORM STATUTE LAW AMENDMENT ACT, 1989
(continued)

Consideration of Bill 2, An Act to amend the Courts of Justice Act, 1984, and Bill 3, An Act to amend certain Statutes of Ontario Consequent upon Amendments to the Courts of Justice Act, 1984.

The Chairman: I recognize a quorum, but in the absence of members of the other party whom we are awaiting, we will delay doing clause-by-clause.

For the people who are watching this on television, I am going to ask the parliamentary assistant to the Attorney General, the member for Mississauga North (Mr Offer), to give a brief explanation of just what Bill 2 is expected to do, and then Bill 3.

Mr Offer: We are very appreciative of just being in the midst of getting into the clause-by-clause analysis of these bills, Bill 2 and Bill 3. To explain what they are, I think it is important to realize that they are the culmination of a great many years of consultation, initiative and reform by the Attorney General (Mr. Scott) and the ministry officials at the Attorney General's office.

These particular bills are designed, in their final form, to provide a more efficient, more accessible and in many ways a more understandable court system in this province. There are a great many provisions contained within the bills, but basically what we are doing through these bills is, number one, merging the current district court and Supreme Court into one trial court system called the Ontario Court (General Division) and a second trial court system at the provincial level, the Ontario Court (Provincial Division). That will be composed of what are now the civil, the family and the criminal courts. That is an intermediate step and these bills are an intermediate step to what we hope in the final form will be a single trial court system in this province.

Of course, as you will very well know, Mr Chairman; that will require a great deal of consultation with the federal government. I believe and I am quite optimistic that this will prove to be the case in the future, because I think we all share the same goal in terms of arriving at a court system which is one which best serves the people of this province.

This is very much an initiative of the Attorney General and, as I indicated, it is the result of a great deal of consultation.

I think one very important aspect of the bills before the members is the increase in the monetary jurisdiction in the Small Claims Court. As you will know, being a solicitor, there are currently really two monetary levels of jurisdiction in Small Claims Court: \$3,000 within Toronto and \$1,000 outside of Toronto. This particular bill and provisions contained within it increase that limit across the board for all of Ontario to \$5,000.

We think it is time that there be a consistent monetary jurisdiction and we think, based on a great deal of consultation, that \$5,000 is in keeping with retaining the Small Claims Court very much as a people's court, as a place where disputes can be disposed of expeditiously and inexpensively.

There is another point with respect to that, and that is that the monetary jurisdiction will be monitored on an ongoing basis. If it turns out that limit can be raised, for instance, then so be it. There is going to be an ongoing monitor of the monetary jurisdiction of the Small Claims Court.

These are complex and comprehensive pieces of legislation which this committee has dealt with. While I have the opportunity, I would just state that I think we are indebted to a number of people, certainly the staff at the Ministry of the Attorney General, one of whom is Doug Beecroft, to my left—this particular initiative has taken up a great deal of his time—and Craig Perkins from the ministry, as well as others.

I think we are also indebted to Mr Justice Thomas Zuber, who did prepare a report dealing with the court system in this province. It became an important facet in dealing with this type of initiative. I hope that these bills will proceed through this committee and this clause-by-clause analysis without controversy; we hope so. I do realize that during the second-reading debate in the Legislature, where bills are debated in principle, we did have the support of all parties. I think it is important to state that all parties agreed in principle with this legislation.

To date, I am unaware of any real dispute from other parties dealing with these provisions. I think it is important that we recognize this. These bills are a step in achieving our final goal of a single-level trial court system in the province. This is certainly an initiative of the Attorney General. It is certainly one which he has been an advocate of for a great deal of time.

It is important, of course, that we have heard from those persons who wished to be heard; that we have had the opportunity of doing in this committee.

Secondly, the committee is grateful that in the Legislature it has had the support of all parties. This is an initiative which I think we can all share and be part of. It is one which I think will serve the people of this province for many many generations to come.

As an overview, I believe that is basically what these particular bills are about. They are about merger; they are about increasing the jurisdiction of the Small Claims Court to \$5,000, and they are about regionalization, which is shifting the decision-making of the court system out of Toronto to eight larger regions within the province.

I think that will provide a more sensitive analysis, in terms of what is going on in a particular region, of the court structure and management of the system. I think it bodes well for all persons within Ontario, not just within the greater Toronto area.

As an overview, that is basically the legislation. It is complex, it is comprehensive and it is one which I hope and trust will meet with the committee's approval.

The Chairman: Thank you, Mr Offer. That was done for the benefit,

obviously, of the people who may be watching this broadcast. As soon as we have representatives of the other parties here, we will proceed to do clause-by-clause consideration. It is a tradition of the House that we refrain from doing so until we do have those members here.

I understand Mr Kormos will not be here today, but he has indicated his consent that we might proceed in his absence. So perhaps we will adjourn briefly. I beg your pardon?

Mr Polsinelli: No, Mr Chairman. If members of the opposition cannot make it to this committee, we should adjourn. We should ask them whether or not they are prepared to attend these meetings. If they are prepared to attend, we will reschedule the meetings. If they are not prepared to attend, then we will decide whether or not to continue as a committee.

The Chairman: If you are putting that by way of a motion—

Mr Polsinelli: I am putting that as a suggestion, Mr Chairman. I cannot understand why neither the New Democratic Party nor the Conservative Party can have representatives here on the scheduled meeting dates of this committee. It is quite frustrating coming to the committee meetings and having to wait, even though all of the Liberal members are here, for the opposition parties to conduct our business.

I think a firm note should go from the chairman of the committee to the opposition parties, asking them what times they are prepared to meet, and if they are not prepared to meet, then we, as a committee, will decide whether to proceed in their absence, and no more of this dilly-dallying around for half an hour, and 15-minute adjournments.

The Chairman: I think I should add, as a matter of fairness, that Mr Kormos did notify myself and the clerk and indicate that we might proceed in his absence. The clerk has just contacted the third party's caucus and apparently someone is coming down. So I think what we will do, recognizing full well what you have said, is that we will adjourn for five minutes and then we will proceed along the lines of your suggestion.

Mr McGuinty: Mr Chairman, how would it be if, in the future, we begin the meeting on the day after at the time that the meeting the day before began; for example, tomorrow we would begin at 2:25? I am not being facetious.

The Chairman: I realize that. I think what we will do, though, when all the members are here, is specifically state that we should proceed right at the hour appointed. Tomorrow morning it will be at 10 o'clock, so that we can get on with the matter.

We stand adjourned until 2:25 pm.

The committee recessed at 1421.

1428

The Chairman: We are at Bill 2. I would ask if there are any amendments prior to section 15 of the bill.

Mr Sterling: I thought I would indicate to the committee that our party, the Progressive Conservative Party, will not be putting forward any amendments to this bill. I will tell you why. We have attempted to put forward

about, I think, probably in the neighbourhood of 50 to 60 amendments to various pieces of legislation.

We have found that the Attorney General exhibits an extreme amount of arrogance through his parliamentary assistant and that they have not accepted even minor amendments on any occasions. Therefore, it is not through a lack of interest that we do not put forward amendments, but we know that the present attitude of this Attorney General is that notwithstanding the arguments that we might put forward or debate in support of our amendments, we find it a totally useless part of the process.

1430

We find it absolutely contrary to what the parliamentary process is supposed to be all about, but we cannot do anything about it in the opposition. The Liberals control the majority of this committee, and even in spite of the fact that often the membership of the Liberal majority changes from day to day, they only looks to the front and asks whether they should vote yes or no. They are not concerned about the debate, they are not concerned about the substance of the amendments. Therefore, we are not going to put forward any amendments on Bill 2 and Bill 3. The government can vote whichever way it wants on its own amendments.

I will only be participating to a very minor degree in the debate as well, in that I am afraid that unless we do not get a change to the Attorney General in the upcoming cabinet shuffle, it will be very difficult to participate in legislation and bringing forward opposite points of view. You know, you can be wrong most of the time in opposition, but you are not wrong 50 or 60 times in a row, so we just will not be participating very much in this bill.

Mr Black: I would just like to identify my concern with the words of the Progressive Conservative member of this committee. If the members of the third party are not willing to meet their responsibilities and bring forward constructive suggestions, that is a sad commentary on their party and on their position.

The Chairman: I think we have had sufficient from both sides, so we will get on with the business of the day, ie, the bill. Again, are there any amendments prior to section 15 of the bill? No amendments?

You will recall that we had unanimous consent that we would use the reprinted copy of Bill 2, which incorporates the amendments. There were amendments to sections 2, 3, 5, 10 and 14. I am going to assume that in calling the vote. Shall sections 1 through 14, as amended, carry?

Section 1 agreed to.

Sections 2 and 3, as amended, agreed to.

Section 4 agreed to.

Section 5, as amended, agreed to.

Sections 6 to 9, inclusive, agreed to.

Section 10, as amended, agreed to.

Sections 11 to 13, inclusive, agreed to.

Section 14, as amended, agreed to.

Section 15:

The Chairman: Mr Black moves that subsection 109(3) of the act, as set out in section 15 of the bill, be amended by striking out "excluding the Small Claims Court" in the second and third lines.

Any discussion?

Mr Sterling: I would like Mr Black to explain what he is doing.

Mr Black: I wonder if the representative of the Attorney General's office would like to comment.

Mr Sterling: May I interfere here? Does the Liberal member understand what he is putting forward, or is he just mouthing what the Attorney General wants him to mouth?

The Chairman: Mr Sterling, as a matter of fairness, amendments are often moved in the House by particular members and then the discussion may take place by a number of members. In this case it would be the Attorney General's—

Mr Sterling: This very same member just chastised me, as a member of the opposition, for not taking my responsibility. I see him putting forward an amendment. He does not understand what the amendment is all about, and that is exactly the issue on which I was talking. We have members of the Liberal government party who do not understand what they are doing but are quite willing to vote in favour of amendments put forward by the government. They even have the audacity to put them forward and not even understand what they are about.

The Chairman: I do not think anybody is going to vote before we find out what the amendment is about, so I am going to ask Mr Offer to explain the amendment to us.

Mr Offer: As members of the committee will be aware, the jurisdiction of the Small Claims Court is limited to two aspects: first, for the payment of money and, second, for the return of personal property.

Having said that, we have an amendment before us to section 15, which speaks to subsection 109(3) of the Courts of Justice Act. Basically, this amendment talks to the granting of equitable relief. This amendment is saying that we want to exclude the Small Claims Court's jurisdiction from subsection 109(3), which talks to the granting of equitable relief. We believe that that is not necessary, because the Small Claims Court does not have jurisdiction under that matter.

It will be noted that this will be followed by two further amendments to sections 16 and 17 of the bill. The subject matter is basically the same, that being that the Small Claims Court has jurisdiction in terms of payment of money and return of personal property. The following two amendments deal with measures upon which the Small Claims Court does not have jurisdiction. By these amendments we are asking that the phrase "excluding the Small Claims Court" be deleted; it is to be deleted because it is largely unnecessary.

The Chairman: Any further comments or discussion on the amendment as moved by the government?

Motion agreed to.

Section 15, as amended, agreed to.

Section 16:

The Chairman: Mr Black moves that section 16 of the bill be amended by striking out "excluding the Small Claims Court" in the fifth and sixth lines.

Mr Offer: The rationale for this amendment is absolutely the same as the other amendment. Once more, Small Claims Court basically deals in two matters: payment of money and return of personal property. Section 110 deals with the making of a declaration of right, and as such is not within the jurisdiction of the Small Claims Court; accordingly, this particular amendment excludes Small Claims Court.

The Chairman: Is there any discussion regarding that amendment?

Motion agreed to.

Section 16, as amended, agreed to.

Section 17:

The Chairman: Mr Black moves that section 17 of the bill be amended by striking out "excluding the Small Claims Court" in the fifth line.

Mr Offer: Again, basically the response is the same. It is dealing with a matter which is not within the jurisdiction of the Small Claims Court, and as such we are amending the bill by striking out the phrase "excluding the Small Claims Court," as it is not necessary.

Motion agreed to.

Section 17, as amended, agreed to.

The Chairman: Are there any further amendments to the bill, save those which have been presented?

Mr Offer: No.

The Chairman: Is there any discussion with reference to the remaining sections of the bill? I see none. Again, we are dealing with the consolidated version, which has amendments to sections 20, 25, 28, 29, 30. Shall sections 18 through 34, as amended, carry?

Sections 18 and 19 agreed to.

Section 20, as amended, agreed to.

Sections 21 to 24, inclusive, agreed to.

Section 25, as amended, agreed to.

Sections 26 and 27 agreed to.

Sections 28 to 30, inclusive, as amended, agreed to.

Title agreed to.

Preamble agreed to.

1440

The Chairman: I understand there was a request through the clerk—and the parliamentary assistant has just reminded me of it—that although Mr Kormos called and indicated he could not attend but that he would be deemed to be here, he wished to have the final passage of the bill and reporting it to the House held in abeyance until he could be here. What is the wish of the committee? The only portion still to be voted on is whether I report Bill 2, as amended, to the House. I understand from the clerk that Mr Kormos will be here tomorrow. As a courtesy to him, perhaps we will move on to Bill 3.

COURT REFORM STATUTE LAW AMENDMENT ACT

Consideration of Bill 3, An Act to amend certain Statutes of Ontario
Consequent upon Amendments to the Courts of Justice Act, 1984.

The Chairman: You have before you a consolidated version of Bill 3, which contains within it the amendments that are proposed. May I have unanimous consent to refer to Bill 3? I hope you all have a copy of it, because the amendments have been interleaved. Do you have a copy of Bill 3, Mr Sterling, with the amendments?

Mr Sterling: Yes, I do.

The Chairman: Could we have unanimous consent, then, that we will deal with Bill 3 as it is reprinted in its consolidated version?

Agreed to.

Are there any amendments or discussion with reference to the provisions of Bill 3 as presented before you in its consolidated form? No amendments or discussion? Did Mr Kormos indicate anything with reference to Bill 3?

Again, I would draw to the attention of the committee that the consolidated version, for which unanimous consent was given that we could use it, shows amendments to section 4, section 12, section 22, section 30, section 34 and section 48.

Sections 1 to 3, inclusive, agreed to.

Section 4, as amended, agreed to.

Sections 5 to 11, inclusive, agreed to.

Section 12, as amended, agreed to.

Sections 13 to 21, inclusive, agreed to.

Section 22, as amended, agreed to.

Sections 23 to 29, inclusive, agreed to.

Section 30, as amended, agreed to.

Sections 31 to 33, inclusive, agreed to.

Section 34, as amended, agreed to.

Sections 35 to 47, inclusive, agreed to.

Section 48, as amended, agreed to.

Sections 49 to 55, inclusive, agreed to.

Preamble agreed to.

Title agreed to.

The Chairman: Mr Kormos on that one as well—Is there any difficulty for members of the committee for unanimous consent that we withhold the voting on the question of reporting Bill 3, as amended, to the House? Agreed to.

Mr Polsinelli: Why?

The Chairman: I take it from that "why" that we do not have unanimous consent.

Mr Polsinelli: My question is, if we have passed all the sections, we have passed the preamble, we have passed the title, why hold on reporting it to the House?

The Chairman: As I say, Mr Kormos did ask the clerk if we would do that with reference to Bill 2. There was not that request with reference to Bill 3, but one would presume that, as night follows day, that that would have been his request. I do not know.

Mr Polsinelli: I aim to be co-operative.

The Chairman: Do we have unanimous consent that the voting on whether I report Bill 3, as amended, to the House be delayed until tomorrow? Agreed. Am I to read from that that it is delayed until tomorrow but not beyond tomorrow? All right. Thank you.

Perhaps, in light of the speed with which the matter has been concluded, the clerk will pass around, if he has not already, copies of the agenda for the balance of the week.

As you know, we have set aside today through Thursday for dealing with justice business. I am advised by Mal Connolly, who is from the Police Association of Ontario, that the public hearings in Toronto on Bill 4, which is the bill dealing with extension of the police complaints mechanism, presently set for the week of 14 August—14, 15, 16 and 17 August—is difficult for them. They would prefer to have the public hearings during the week of 21 August. I am wondering if the committee has any difficulty with that. Do we have unanimous consent?

Mr Offer: If we are not going to have it the week of 14 August instead of 21 August, which is sort of the middle of August, the committee

might want to hold this off until 28 August for those who want to make submissions. It might break up any plans that committee members have, in terms of its being in the middle of August. If we are going to have to postpone it—

The Chairman: Maybe I can save you some trouble. I understand from the clerk that Mr Connolly indicated that either the week of 21 August or 28 August would be acceptable.

Do we have unanimous consent, then, on the week of 28 August for the public hearings in Toronto on the question of Bill 4, which is extending the police complaints mechanism?

Agreed to.

All right. Then we will proceed on 28 August and commence proceedings at 2 o'clock in the afternoon for public hearings.

Just to be clear, in view of the proceedings today, would it be the committee's wish that we hold in abeyance the Henderson report, which we had intended to deal with? We might either leave it for tomorrow or the following day if tomorrow does not give us sufficient time. Is there unanimous consent that we deal with the Henderson report in that fashion? We will say tomorrow, at the moment.

Mr Polsinelli: Is the draft report ready for our consideration?

The Chairman: The draft report has been circulated, I believe, to the subcommittee; I do not believe it has been circulated to all the members. Was it? I understand from the clerk that it was sent to all members of the committee. Will Susan be available tomorrow? Susan, our research officer, will be here.

So we will schedule it for tomorrow with the understanding that if for some reason it cannot be reached tomorrow, it will be reached the following day.

Agreed to.

Anything else? That appears to be it for today. I thank all members for their co-operation and we stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1448.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988

TUESDAY 1 AUGUST 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
CHAIRMAN: Callahan, Robert V. (Brampton South L)
VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)
Hampton, Howard (Rainy River NDP)
Kanter, Ron (St. Andrew-St. Patrick L)
Kormos, Peter (Welland-Thorold NDP)
Mahoney, Steven W. (Mississauga West L)
McGuinty, Dalton J. (Ottawa South L)
Offer, Steven (Mississauga North L)
Polsinelli, Claudio (Yorkview L)
Runciman, Robert W. (Leeds-Grenville PC)
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Kozyra, Taras B. (Port Arthur L) for Mr Kanter
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Clerk: Arnott, Douglas

Staff:

Baldwin, Elizabeth, Legislative Counsel
Evans, Catherine A., Research Officer, Legislative Research Service
Swift, Susan, Research Officer, Legislative Research Service

Witness:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 1 August 1989

The committee met at 1010 am in room 151.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
(continued)

The Chairman: I recognize a quorum. There are members from the third party and the government, but at the moment there is not a member here from the New Democratic Party. Mr Kormos informed us yesterday that he would not be here yesterday but would be here at 10 o'clock this morning.

I am going to have Mr Offer perhaps indicate, for the benefit of those people who may be watching us, what the Henderson report is about so that they will have some understanding of what we are discussing. Perhaps in the meantime Mr Kormos will arrive. I would rather do that than proceed with the balance of Bill 2 and Bill 3. Mr Offer, perhaps you could assist us.

Mr Offer: I did not realize I was going to be speaking on the Henderson report. As you know, the Henderson report, chaired by Gordon Henderson, is basically a report dealing with remuneration, allowances and benefits of provincial court judges in Ontario. It was a report which was submitted in September 1988. It contains a number of recommendations dealing with how provincial court judges ought to be remunerated and the types of pensions and benefits that ought to be allowed. In my opinion, there is a crucial recommendation dealing with the issue of salary indexation.

As I understand it, the process was that this report was tabled before the Legislature and referred by the Legislature to this committee for some deliberation. We are at the point now where we are ready to submit our final report, which is up to the committee. We have dealt with some of the recommendations. I think that, in general, we have approved all but 5 of the 45 recommendations.

To my recollection, we have specifically referred two recommendations to Management Board for immediate consideration, those recommendations dealing with the question of pensions, because of the very large issue of costs associated with pensions. I would expect that during our deliberation on the Henderson report, as we have already, we will deal with it, by and large, with an approval of most of its recommendations.

The Chairman: Mr Kormos is now in attendance. As requested, Mr Kormos, yesterday we proceeded with you being deemed to be here—we got your message—and dealt with Bill 2 and Bill 3. We passed all the sections and amendments to the two bills. However, I withheld voting on the question of whether I would report to the House Bill 3 and Bill 2, as amended, because you had requested that. If you want to tell us whatever you would like to say—

Mr Kormos: I want to thank you for that courtesy. I know deeming was easily done; it came somewhat naturally, and so be it.

Interjection.

The Chairman: Deeming; he was deemed to be here.

Mr Kormos: It has become a very political term. I picked it up readily, if only through osmosis.

The Chairman: Are there any comments or discussion you would wish to place before us before we vote? Do you want to give up the floor to Mr Sterling?

Mr Kormos: I shall.

Mr Sterling: Perhaps because Mr Kormos just arrived at this moment, I will give him a moment to collect his thoughts. Yesterday I indicated that I saw no purpose in putting forward amendments to legislation at this time, primarily because of the record of this government in accepting any opposition amendments. It has been a dismal record. It seems this government has blinkers on in terms of dealing with legislation; therefore, I opted to allow the government to go ahead and pass these amendments without really making much comment, in that they were really minor amendments, etc.

I do want to make it clear that I fully support the Canadian Bar Association and other groups that were in front of this committee, in that I do not understand why the Attorney General (Mr Scott) did not allow this legislation to gestate to allow the legal community an opportunity to spend the summer looking at this.

While we have been talking about this proposal for some time—the Zuber report, court reform, etc, etc—the legislation was brought forward only on 1 May of this year. That is some three months ago. While people may say that three months is a long time, the people we should rely on in drafting the very best possible piece of legislation are busy people. Because the courts shut down normally during the summer months, they often are off on their vacations.

As we know, we are not going back into the Legislature until 10 October of this year. Quite frankly, I just do not understand why the Attorney General was so anxious. Before we closed the previous session, they were even looking at having Bill 2 and Bill 3 wrapped up at that time. I do not understand that. In terms of dealing with legislation, particularly this kind of legislation, where you are making major changes to the court structure, you would think the logical process would be to try to co-op as much advice and evidence as you possibly could before you put it forward for implementation.

What we have done is consider Bill 2 and Bill 3 clause by clause; we have passed them; now we want to report them. If the Liberal majority wants to report it, so be it. I do not understand why we would. To me, the logical thing for this justice committee to do would be to adjourn the hearings on Bills 2 and 3, on the chance that some of these groups would come forward with some proposed amendments prior to us meeting on 10 October or shortly thereafter. I just do not know why the government would want to cut out this kind of input that it gets free of charge from the legal community and from the people who are going to put it in effect.

1020

I just have not understood the government's concern with being so expeditious with this piece of legislation, given that it allowed the Zuber report to sit for almost a year and a half, I believe, before it took action on it.

The 1 May legislation, I might add, is not the Zuber report but is only part of the Zuber report and is very different from the Zuber report in some aspects. What we had is a brand new proposal on 1 May 1989, and we have a government that is rushing through a very complicated piece of legislation.

I just do not understand the logic or the reasoning behind doing this, and I would suggest to the committee that it would be wise for us to postpone voting on reporting this bill until our first meeting after 10 October, when we get back, given that we will not be able to pass third reading of the legislation anyway until that time. What is the purpose of cutting off our noses now, perhaps in spite of ourselves, if we get some advice later where we would want to go back and look at a few of the sections?

The Chairman: Is that a motion, Mr Sterling, or are you looking for unanimous consent to do that?

Mr Sterling: Unless the government is of the nature to do that, I suspect that putting a motion forward is like putting an amendment forward. It has no more use here.

The Chairman: I might add as well that it is my understanding that these bills got on to the hearings during the recess as a result of a subcommittee meeting in which the members decided they would be on here. Is that not right?

Mr Sterling: But that is the government. The opposition members on the subcommittee do not decide the agenda of this committee. We ask the government, "Which bills do you want on?" They say, "Bills 2 and 3." The committee votes on what the subcommittee does. If the government says it wants 2 and 3, it gets 2 and 3, because it has six members on this committee who will support it in whatever it wants to do.

The Chairman: I do not recall any votes on the subcommittee's—

Mr Sterling: Mr Chairman, from time to time you go back to the subcommittee and say, "The subcommittee decided this; therefore, the opposition parties are responsible for this." We are not responsible for this. I cannot speak for Mr Kormos, but I think I have heard him say before that he agrees with the position I just put forward; in fact, I think he had a substantive motion on that before this committee during the hearings; that we put this off until the fall.

Do not say it is the subcommittee that decided it. It is the Liberal government that decided to push this thing forward.

Mr Polsinelli: In terms of this government's willingness to accept amendments proposed from the committee, in the past couple of years, I refer Mr Sterling particularly to two very important acts this committee passed, the Mental Health Act and the Family Law Act. Mr Sterling, being a member of this committee, will recall that many opposition amendments were accepted by the government.

But that is really neither here nor there. I think what we are discussing here today is whether or not to delay reporting this bill.

What does delaying reporting this bill mean? We have had the public hearings. We have had the clause-by-clause discussion of it. The bills have been passed. The preamble of the bill has been passed. The title of the bill

has been passed. The only decision this committee really has at this point is either to report it to the House or to put aside all the work it has already done on bills 2 and 3 and start from scratch again.

I favour reporting it to the House and just getting it out of our hair, because we have done what we were supposed to do with respect to these bills.

In terms of reopening the discussion and having public hearings again and going through the clause-by-clause again, this committee decided, two or three weeks ago when we had a motion before us from Mr Kormos requesting the delay, that it would proceed with the bill. In terms of the discussions of listening to further groups or of delaying this bill any further, this committee has decided it would not do that.

I think at this point our decision is quite simply one of either referring it to the House or starting the thing from scratch again. I, for one, am not prepared to give unanimous consent to reopen the discussion of these bills, because I understand you would need unanimous consent to reopen discussion. The bills have been dealt with by this committee. The only choice we have is this: Do we or do we not report them to the House? I submit this is the only question before us today.

Mr Kormos: Let's place a couple of things in their correct light.

You are quite right, Mr Chairman, that the subcommittee agreed to place bills 2 and 3 on the agenda, but that was before. During the course of these so-called public hearings Mr Polsinelli speaks of, the Canadian Bar Association—Ontario, the Advocates' Society and the Criminal Lawyers Association came here and said, "Please, in view of the timing"—That is to say relatively short notice from the announcement on 1 May; then the appearance of the bill; and then, even more importantly, the amendments, which purported among other things to address the serious constitutional issues that were raised by at least two sources. These same groups are very representative of the bar, among other things; and obviously, with respect to groups like the Advocates' Society or even the Criminal Lawyers Association, you get some highly specialized elements of the bar or leading factions of the bar. They said, "Please, all we need is a couple of months."

Mr Sterling talked about the ill timing in terms of lawyers' schedules. So be it. The fact is that these organizations in particular addressed the matter of these amendments, which were really thrust upon them with virtually no notice or such short notice that nobody could reasonably expect them to address those, least of all by virtue of consulting with their own membership.

My motion did not request a delay. Once again, I will repeat: I made reference the last time we discussed this, and it was when I made my motion, to Hansard transcripts. Among others, on 1 May, on behalf of the opposition, I indicated quite clearly that the concept of reform was quite welcome. Quite frankly, our agreement on the subcommittee to proceed with these matters in the order that was agreed to illustrates how pleased we are to see reform take place.

But the real concern arises when there is this constant theme on the part of the government of consultation. Again, I am not going to dispute the fact that prior to 1 May there was consultation of a variety of ilk, but it remains that there never was, and it can never be claimed that there was, meaningful consultation about the actual bill and the amendments to that bill, in spite of the really serious concerns raised: (1) constitutional concerns;

(2) some of the procedural and substantive sorts of things, and the impact of some of the changes that are proposed in the legislation.

My motion did not request a delay; it requested that the matter merely be deferred until this committee meets when the House next resumes, and we know that now to be on 10 October, so that these groups—As Mr Sterling said, they are free. What more could the taxpayer ask for? They are free. They warned this committee of the chaos and the expense both for the government and taxpayers and for individual litigants should this matter be proceeded with in the way this committee has proceeded with it.

The expertise was sitting right there before this committee, quite prepared, given a short period of time to do its research and consultation with its own membership and define its position, to assist this committee in developing—Again, there was not a single group that was not an advocate of reform. Some were critical of some of the drastic changes that were taking place, and there was good comment in that regard. But they were quite prepared to assist this committee, and they were the people most capable of assisting this committee.

The government is going to harp away on this theme of consultation, and that is completely, entirely not the case in this regard.

Sure, there has been consultation in a general sense prior to the announcement on 1 May, but there has not been a single bit of meaningful consultation with respect to the legislation contained in Bill 2 and Bill 3 and in the amendments to those bills.

Obviously, there is some weight given to some of the criticisms about the constitutional difficulties this creates because, as I say, it is clear that at least some of those amendments were designed to address, or at least purported to address those constitutional concerns.

A century of structure, of procedure and of standards being altered radically were spoken of, and they were expected to survive another century. The most futile exercise here would not be the matter of deferring these to await comments from those groups we spoke of, but to ram them through and not wait a mere two months.

Once again, Mr Sterling quite accurately points out that there is not a single thing to be lost because indeed, the House cannot even begin to consider this legislation until at least 10 October. So there is not a single moment's delay in deferring the final vote on referral of these two bills to the House until after October 10, so that those groups who appeared before this committee already can comment on it.

There is not a single element of delay inherent in that and quite frankly, it is irresponsible not to heed the advice of those people and groups prepared to give it.

Obviously, if Mr Sterling were inclined to make a motion, then it would have my support. Equally obviously, he may be disinclined to make the motion because he knows it would be futile because, for some bizarre reason that I certainly cannot fathom, the government wants this wrapped up with a bow and made a *fait accompli* without consultation.

That is what I just plain do not understand. These groups asked this committee for an opportunity to comment on the bill and the amendments.

Surely, by the very nature of who they are, they deserve to be respected sufficiently by the government; but maybe they are not; maybe the government has no respect for their opinions, and I guess that message will go out loud and clear. The opportunity to consider the bills and the amendments was not given to them and that is inexcusable.

Mr McGuinty: It was about a week or so ago that I expressed somewhat the same concerns as Mr Sterling and Mr Kormos. They were in part allayed by some additional background information I was given at that time.

During the interval I did some homework. I spoke with a number of friends, colleagues and judges at various levels and a number of lawyers in addition to my four sons, and I think the concerns I had at that time are still with me.

I found the presentation by a number of people from the Criminal Lawyers Association very compelling and convincing. I think it is very unfortunate that my colleagues from the government, who are on the committee at this time as substitutes, were not with us at that time. That in itself is a reflection of the revolving chair syndrome which I think does not always make for effective committee work. I do not say that as a reflection on my colleagues; it is part of the system. Personally, I find it extremely strange and in some ways intolerable.

Judging by presentations made by and letters I have from Mr Levy and Mr Somerville, among others—I have done a number on these people, and found out they are not fly-by-night people with a vested interest—I find they seriously are trying to make a contribution.

Again, I have no firm evidence that justifies my questioning their allegations. If, in fact, as Mr Levy alleges, they simply did not have time to get together, and I find that understandable, I think it would be unfortunate if they were not given that opportunity.

There is an old principle of administration which I think applies in politics as well. It is called administration by objectives and control. It simply implies that those who are going to be involved in the implementation of changes and new procedures should be involved in their formulation. Even if their views are not accepted, in a sense they are neutralized by at least being given the opportunity. I think that is good administration, I think it is good politics, I think it is good for the legal system.

I share the reservations of Mr Sterling and Mr Kormos. I was of this mind in part a week or 10 days ago. As I said, I have gone home. Politics is not merely policies; politics is people. I have spoken with people in the legal fraternity, for whose judgement I have the highest regard, and they share my concern.

Mr Offer: I have listened very carefully to all the comments made so far, and I think that we are in many ways dealing, if not exactly then certainly in substance, with the motion made by Mr Kormos a couple—

The Chairman: Just a second. Mr Sterling has not put forward a motion, so—

Mr Offer: No, I did not say that. I said we are dealing in substance with the type of motion Mr Kormos made earlier. We had some discussion on that. If I might, I have heard from Mr Kormos today and certainly from Mr

Sterling. I think these bills before the committee—

The Chairman: Can I interrupt you for just one second? Mr Sterling, is it your intention to put forward a motion?

Mr Sterling: What will happen in this committee, if I—

The Chairman: Mr Offer presently has the floor. I just want to know, are you putting forward a motion? If you are, then we can speak to it.

Mr Sterling: Maybe I can ask for your clarification on that. The question will come whether we will report this bill or not. Now, my motion would be, in effect, to defeat that motion. Therefore, I do not need a motion. Would that not be correct?

The Chairman: That is fine. I just wanted to clarify that.

Mr Offer: Just to clarify, basically what we are talking about is whether this bill is to be reported. That is fine.

This particular legislation did not come out of the blue, as it were. It is the basis of a great deal of consultation that took place prior to the 1 May announcement.

One has to remember that in 1986 or thereabouts, the Attorney General (Mr Scott) appointed Mr Justice Thomas Zuber to conduct an inquiry into the court system in the province. From that consultation, which was in-depth, extensive, there was a report. It was a report by Mr Justice Thomas Zuber dealing with the court system in the province. There was a great deal of reaction. There was a great deal of comment from that report. That report took about one year in the making. It was not court reform. It became a facet—yes, an important facet—of court reform, and it became a focal point for reaction, comment and discussion around the whole issue of court reform. There was consultation at that phase, but that is not where it ended.

After the Zuber report, there was a task force set up through the Ministry of the Attorney General dealing specifically with the issue of court reform. I know this is an issue which has been discussed not only in this province but in other provinces for many years. It is not something which is a first-time type of initiative. It has, in fact, been passed in seven or eight other provinces. Through the Ministry of the Attorney General, we set up a court reform task force which was designed to use some of the information from the report of Mr Justice Zuber, which was designed to go out and discuss, with other persons who are intimately involved in the court system, their reaction, their comments with respect to court reform once more in general with respect to the question of the jurisdiction of Small Claims Court, an essential item in these initiatives.

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Mr Polsinelli: Did they discuss it with the Canadian Bar Association?

Mr Offer: I hear the question: Was there discussion with the bar association? My response is: Of course there were discussions; ongoing discussions. We had the Canadian Bar Association provide to us an index of some of their reports. Seven or eight or nine items dealt with different aspects of court reform. There were discussions with many other individuals again, as I have indicated, intimately connected with the court system, with

lawyers, judges, with administrators, because this type of initiative is going to impact on them, on the way the structure is going to be, maybe for generations to come.

Members have heard me and certainly the attorneys say that this is the first fundamental overhaul of the court system in over 100 years. So there was that type of discussion. There was the discussion, as I have indicated earlier, of the small claims jurisdiction. There was discussion of the question of merger. There was discussion of all of the aspects which are found within this particular legislation.

After such extensive consultation, which ran almost two and a half years—three years—there is the question: Is it the responsibility or obligation of the government to act? The Attorney General, after that consultation, had the initiative to reform, to introduce the bills before the committee. These bills are the culmination of years of consultation. We know that these bills provide for a fundamental overhaul of the court system in the province. We also know that it is a first phase of two phases, the second phase being a single-level trial court system in the province.

But when we hear people talking about not being consulted on the single-phase trial court system, we have to keep in mind that that is not what these bills are about. These bills are about merger, about increasing the Small Claims Court jurisdiction, about a more effective management of the court system in the province, and about an important and necessary first step towards a single-trial court system in the province. These bills are not the single-trial court system in the province, but they are a necessary first step.

We have had consultation. This is an important initiative of the Attorney General and his ministry. We have had a great deal of discussion on these bills. After that the question becomes: Is it the responsibility of the government to act?

Mr Sterling brings out the point, and correct me if I phrase this not word-for-word, that the government wants to pass these bills and it is going to pass these bills. My response to Mr Sterling is yes, the government does want to pass these bills. Yes, the government is in support of these bills and this initiative.

Mr Sterling: So is the opposition.

Mr Offer: And with your support, Mr Sterling, we will pass these bills unanimously. I thank you for that support. We do not hide behind that question as to whether we do or do not want to pass it. We sure do want to pass these bills. Do we want to pass them today and to, I guess the question is, report them to the Legislature? Yes. It is an important step. I know that in second reading we did have the approval of the opposition parties. I know that it was in principle, but it is an important step. A great deal of work and consultation have resulted in these particular bills, and the question, I guess, before the committee is should these bills be reported to the Legislature. I suggest, and I am going to be voting, that they should be reported to the Legislature. The question is before us and we can vote as we wish, but certainly I am going to be voting in favour of this report back to the Legislature.

It is an important initiative. It is an important first step in making a more manageable court system, a more accessible court system, a more efficient court system, a more understandable court system and a court system which

will, in the short and long term, benefit the people of the province in a way which the present system has not been able to do.

Mr Kormos: I have listened carefully to what Mr Offer had to say and I guess I want some clarification, if he does not mind. He is talking about consultation, but he is talking about pre-May-Day consultation. He is talking about consultation before the bills were drafted and before the amendments to those bills were prepared. Why will he not permit the Canadian Bar Association—Ontario, the Advocates' Society and the Criminal Lawyers' Association the short period of time they require to analyse, discuss and then comment on the legislation itself? Why will he not consult with them with respect to the printed bills?

I am not going to argue the fact there was consultation prior to May Day, but he has avoided the issue of the specific request made by these people saying: "We haven't had a chance to digest and analyse the bill and the amendments. We need an opportunity to that so we can comment on the bills." That is what Mr Offer avoided in his comments; he avoided an explanation.

There can really only be one of two or three explanations. First, he is not interested in what they have to say about the bills. Second, he does not believe them when they tell him that they need a little bit more time, and the fact is they were not prepared to specifically comment on the bills or the amendments other than in the most general sense. So maybe Mr Offer can think of more horrid reasons why he would not want to give them the chance to comment on it. Either he does not care what they have to say or maybe he cares what they have to say but he does not think it is of any weight because he thinks they are—well, I am sure he does not think they are dough heads. Third, he does not believe them and he thinks they are playing games with the system.

I would like to know which one of the—we will exclude the dough head—two things Mr Offer has in mind when he refuses to give them time to comment on the bill. How can he respond to their request for more time? What does he think they are doing by requesting more time, especially in view of the fact that it came from more than one body? Does he think they are sort of jerking around with the system and just playing games with them or does he think they are genuine and sincere in their request for more time? I would like to know that and I am sure they would like to know the attitude of the Attorney General's office to the respective groups. In any event, the actions to date speak louder than words, but perhaps Mr Offer could articulate that for us and for them.

Mr Offer: I think it will come as no surprise that I am not going to agree with either of the alternatives that Mr Kormos has put forward. I do not think you will fall off your seat on that basis.

Mr Kormos: I was taken aback slightly; I did not fall off my seat.

Mr Offer: The point to be made is that the CBAO was here, that the CBAO has made its comments on the bill known. They have been given the opportunity, post 1 May, to do so. They have been before this very committee to do that. They have provided a great deal of information, and the whole question as to not being able to have the opportunity to come before the committee is defeated by the mere fact that they came before the committee and they did speak.

Mr Kormos: They asked for more time.

Mr Offer: —to the bill, to the initiative. It is somewhat interesting to say, why not allow the CBAO to come before the committee when it has already been before the committee? I am not going to comment in particular on their submission, save as to the fact that, as we all know, they provide an important input in any initiative, in any change to the court reform system in the province.

My answer to your particular question is, first, not to choose any of the alternatives to the question which you have posed but, second, to indicate that the CBAO has been an important consultative group in this initiative, that it has come before the committee and talked about the bill.

Mr Kormos will know that this particular bill does carry with it something in the vicinity of 35 or 40 amendments, post-May 1. There are amendments to this bill dealing with the wording of the merger of the Supreme Court and the district court, dealing with the wording of the setting up of the Small Claims Court as a branch of the new Ontario Court (General Division). Mr Kormos will be aware that much of that change in wording was as a result and a reaction to different concerns raised by other persons.

There has been, in our view, ample time for response and reaction to these particular bills.

Mr Kormos: What about the Criminal Lawyers' Association? Maybe Mr Offer could talk about them.

The Chairman: Just a second. Mr Sterling was next—

Mr Kormos: I am sorry.

The Chairman: —unless he is yielding the floor to you. Mr Sterling.

Mr Sterling: Thank you, Mr Chairman.

Mr Kormos: I guess he is not yielding the floor to me.

Mr Sterling: Well—

Mr Kormos: Would you, please?

Mr Sterling: Sure, I will yield the floor.

Mr Kormos: Thank you, Mr Sterling.

The Chairman: Such a co-operative effort.

Mr Kormos: What about the Criminal Lawyers' Association? What do you have against them?

Mr Offer: Am I supposed to respond to that?

Mr Kormos: Yes. They did not even appear before the committee. They sent a letter saying, "Sorry, we would love to talk about it, but here is our letter from Mr Levy saying"—

Interjection: He was here, wasn't he?

Mr Kormos: When?

The Chairman: Mr Levy was here.

Mr Kormos: When?

Mr Offer: You might not have been in attendance when Mr Levy actually was here.

The Chairman: Oh no, sorry. Mr Levy was here on the judges' salaries, the Henderson report.

Mr Kormos: That is right, because Mr Levy—

The Chairman: Was he here on this as well?

Mr Kormos: I would like to know when, because Mr Levy sent a letter saying: "Sorry. Can't do it, guys. The timing is off. Please give us a little more time." That letter was presented to the committee just about at the second-to-last time, short of yesterday, that this committee dealt with Bill 2 and Bill 3. There was a letter. It is on record.

Mr Offer: Yes. I guess the response is that I think that the concerns raised by the criminal solicitors, particularly Mr Levy, dealt in the main with the implementation of a single trial court system in the province. That is, of course, the phase 2 aspect. Their concerns did not deal with the legislation primarily before the committee members today.

But the point to be made is that if we are just going to go through all of the particular elements of the people who could come before the committee who did not come before the committee, that is always the obligation of the people who have the opportunity. This committee, and I am not going to speak for the committee as a whole, but this committee did give the opportunity to people to come before it, to make submissions and to discuss the particular piece of legislation.

People did come before the committee. We had representation from the CBAO. We did have representation from the County and District Law Presidents' Association that came before the committee. We did have people coming before the committee, talking about different aspects and the initiative, either in particular or as a whole. That opportunity was given to persons to come before the committee.

We have passed the legislation after that type of consultation, after the consultation which took place after 1 May but prior to the committee, after consultation which took place prior to the 1 May announcement, which really started with the appointment of Mr Justice Thomas Zuber. Now it comes before this committee after all of that consultation, after allowing persons to come before the committee to make representation, after going through the clause-by-clause of the bills and after passing all of the sections.

The question then becomes whether this committee is going to report the matter to the House. I think we have that obligation to do so. Of course it is up to the committee members to decide as they wish, but I believe we do have that obligation to report this back to the House.

Mr Sterling: I think the parliamentary assistant has blinkers on. I think you actually believe that every time you pass a bill or you go on to

another step, a victory has been achieved. That is not necessarily so if you have a bad piece of legislation or a piece of legislation that is flawed.

You have consulted widely on this issue prior to Bill 2 and Bill 3 coming down, no question about that: in fact, maybe too much consultation prior to coming to a conclusion. I think we were pushing at that time.

There can be no doubt that my party is in very substantial support of this reform. In fact, I may argue—may have argued, had we really got to the issues—for a wider reform than you have proposed. In my area of eastern Ontario, quite frankly, the bar feels and the public feels that it is too expensive to litigate in Ontario under the present rules because we have to come to Toronto so often in order to complete that litigation. Some of that will be addressed in this legislation.

But I want to tell the parliamentary assistant too that there are many pieces of government legislation that have proceeded through this Legislature, prior to the time that they would ever have been considered, only through my involvement as deputy House leader for our party. I have said to the government House leader: "Look, I have consulted with Mr Kormos"—or my other colleagues on this side, the opposition side—"and we don't really have trouble with such and such a bill, why don't you bring it on? Let's get it over with. There is no great debate. We don't need to talk about this any further. Let's get on with it."

There are four or five pieces of legislation that I can point to over the past two years where I have said to the government: "Why don't you put this on the order paper? We can deal with it in 15 minutes in the House. We can deal with it in a short period of time. Let's get on with it." The Justices of the Peace Act was an example of a piece of legislation that was sitting there and has been sitting there for years and years, or the ideas have been sitting there for years and years, and the bill was brought forward only through my insistence at House leaders' meetings that it be brought on.

All I am saying is that as you bring legislation forward, there is a natural period of time that it has to be talked about. It depends upon the complexity of that legislation; it depends on how many people are involved in what comes out of it.

I really do not understand. You talk about the CBAO. In their submission, and this is their brief on 17 July 1989, they say:

"The CBAO, however, has significant concerns that major aspects of the legislation have not been subject to discussion with the bench, the bar and the public. The Attorney General is intent on rushing the legislation to third reading, subject to his undertaking to take into account the views of the bench, bar and public in remedial legislation to be submitted in the fall of 1989." We are not going to deal with this until the fall of 1989. It is not going to come up for third reading in 1989. "The CBAO categorically rejects this approach as being contrary to the interests of the public, our legislative tradition and common sense."

That is what the CBAO said to us on 17 July.

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Another point too is that this legislation, Bills 2 and 3, and the public hearings were being conducted at a time when many of the legislators

were involved in the Legislative Assembly and not being able to be in that committee. I can recall, on two or three occasions during the submissions, that I had no option to be in the committee at that time. After reading the submissions, I come to the general conclusion that most of them were asking for more time over the summer to look at the legislation and to come before the committee.

Now the CBAO may decide that it does not want to make a submission in front of the committee. They may not have some substantial things to say after they have looked at it. I have heard from the Supreme Court judges of our province that they have a concern over the constitutionality of it. I think maybe we should allow that to sit there for a while, after your amendments, which have been passed by this committee, have been looked at by the judges or by their council, so that we have an opportunity to hear about that. I really fail to see the need to deal with it today or tomorrow.

My party will probably be voting for Bills 2 and 3 when they go through, unless some judges or somebody else can come up with some very significant arguments against this legislation. All we want to do is to make certain that when this is put into place, that our courts are not fouled up, that some poor litigant is not put at enormous expense because somebody has attacked the jurisdiction that is established under this bill of one of the courts. I just fail to see why you continue to have blinkers on when dealing with this process and dealing with Bills 2 and 3. I do not understand why we could not report this bill the first time at bat.

What you are inviting, when this bill is reported to the House, is for Mr Kormos or I to force this into committee of the whole House. We will then have to go through a lengthy debate in the Legislative Assembly. I mean that is my choice. At that time, we will not have the luxury of calling before us witnesses to clarify their position. Therefore, all you are doing is transferring it from a small committee into the Legislative Assembly to eat up more of our time in the larger legislative body.

I just do not understand. I mean I can use the procedure—one member can force it into committee of the whole House when it returns to the Legislature and we can go through three, four, five days, or two weeks of debate in the Legislature if that is necessary at that time, but what we are doing by reporting it now is cutting off our option to call in somebody in front of this committee to give us their free advice. I do not understand the parliamentary assistant's logic.

The Chairman: We have had significant discussion. I am going to call for the vote. We will deal first with Bill 2. Shall I report Bill 2, as amended, to the House?

Mr Sterling: No.

Mr Offer: Agreed.

The Chairman: Carried.

Mr Sterling: Mr Chairman, I said no. I want a recorded vote on this.

The Chairman: Recorded vote. All right.

The committee divided on whether to report Bill 2, as amended, which was agreed to on the following vote:

Ayes

Kozyra, Lipsett, Offer, Pelissero, Polsinelli.

Nays

Kormos, McGuinty, Sterling.

Ayes 5; nays 3.

Bill 2, as amended, ordered to be reported.

The Chairman: Now dealing with Bill 3, shall I report Bill 3, as amended, to the House?

Mr Sterling: No.

The Chairman: Recorded vote again?

Mr Sterling: Yes, please.

The committee divided on whether to report Bill 3, as amended, which was agreed to on the following vote:

Ayes

Kozyra, Lipsett, Offer, Pelissero, Polsinelli.

Nays

Kormos, McGuinty, Sterling.

Ayes 5; nays 3.

Bill 3, as amended, ordered to be reported.

The Chairman: All right. In addition to the business we have completed, you should have before you a copy of the draft report prepared for us by our research officer in regard to the matter of the Henderson report. Does everybody have a copy of that? Hearing no dissent, I gather everybody does. What is the wish of committee? You have had the report. Are you in agreement with it or is there to be some discussion on it? Do any members have any discussion on the draft report that has been prepared for us?

Mr Sterling: I want to dissent from the report.

The Chairman: I understood there would be a dissent. Is that in writing?

Mr Sterling: I do not have it in writing today. I did not know we were going to be dealing with it.

Mr Polsinelli: On a point of order, Mr Chairman: Is it a custom normally to deal with these reports in camera?

The Chairman: The committee, on a previous occasion, voted to deal with the report in public. Perhaps I should ask again—we have dealt with everything else in public to this point—is it the wish of the committee that

it be different with reference to the draft report? There is unanimous consent then that we deal with the matter in public?

Mr Polsinelli: I have no problems with it.

The Chairman: All right. Go ahead, Mr Sterling.

Mr Sterling: I want to dissent from the report. I received this, I believe, yesterday, so I am going to be writing a dissent to the report, which will probably be all of one paragraph in length.

The Chairman: Did you just receive that yesterday? This was sent at the beginning of July to every member of the committee and the subcommittee had it well before that.

Mr Sterling: I could be wrong. That was when it came to my attention for the first time.

The Chairman: All right. I am just going to inquire of the clerk.

Mr Offer: I know that Mr Sterling had indicated that they were going to write a dissent, but my understanding was that Mr Kormos was also going to write a dissent on this, if I am not mistaken.

Mr Kormos: Yes, and I have to confess, in view of the scheduling, I figured Monday and Tuesday were safe with Bills 2 and 3. I guess my absence yesterday expedited things. I will never do that again.

The Chairman: Mr Sterling, there is no difficulty if yours or Mr Kormos's dissent is not ready or if it is going to be a joint dissent, but I think there should be a time limit or a period at which time the dissent will be available to us so that the report can be put together and go to the House.

Mr Sterling: I agree. Sure.

The Chairman: Any suggestions from members of the committee as to the time frame in which we should receive that dissent? Hello out there?

Mr Pelissero: Just give us a moment.

The Chairman: All right.

Mr Kormos: The schedule was such that a whole pile of us, I suspect, expected that at least a couple of days would be spent on Bills 2 and 3. I am wondering if this matter might be dealt with at 2 pm tomorrow afternoon, because I suspect—I am not mistaken about that—that is it for the standing committee on administration of justice for this week.

The Chairman: That may well be. The next item of business is Bill 4 and I was going to inquire if it was possible that we might have some form of a briefing tomorrow on Bill 4. The only difficulty with that, I guess, is that we are not going to be dealing with those matters until the third week in August. Is that correct?

Clerk of the Committee: The last week.

The Chairman: The last week in August, and we are not certain whether the composition of the committee will be the same. For that reason, I

thought briefing would not really make sense.

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Mr Kormos: The week of 14 August, is that correct?

The Chairman: I am sorry, I should have indicated that to you. Yesterday, in your absence, the committee was advised that Mal Connolly, who is the president of the Police Association of Ontario, could not attend on the originally scheduled date of 14 August. He then indicated that the week of 21 August or 28 August was better for his association, and it was decided by all in attendance that 28 August was the better time. So, in fact what you have before you is the revised schedule, which again may be a revised schedule because of the business being completed, or assuming it is completed.

Mr Kormos: I already said holy cow. The 14 August meeting is cancelled, the week of 21 August meetings is cancelled. We have Bill 145, which, because this committee does not want to meet in September—somebody decided this committee does not want to meet in September—is pushed aside. Is that correct?

The Chairman: I am not sure if it is pushed aside. I would like to know, what was the authority given to us by the House? Does the clerk know the terms of reference? Was Bill 145 one of the items?

Clerk of the Committee: No.

The Chairman: We were not given authority by the House to deal with Bill 145. The authority that we have is as follows: The standing committee on administration of justice to consider Bill 2, An Act to amend the Courts of Justice Act, 1984; Bill 3, An Act to amend certain Statutes of Ontario Consequent upon Amendments to the Courts of Justice Act, 1984; Bill 4, An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984, and the 1988 report of the Ontario Provincial Courts Committee.

We have dealt with all of those items, with the exception of the report of the Ontario Provincial Courts Committee, which we are dealing with now, and Bill 4. You may recall that we have had certain work done on Bill 4 already. We travelled, I believe, outside of Toronto to receive deputations from people in connection with it, and we had scheduled time for the people from Toronto or around Toronto to make submissions.

If you are asking that this matter be put over until two o'clock tomorrow in order to allow you and your colleague of the third party to prepare your dissent, it would be nice to have that. We could deal with the entire matter and have the report prepared so that we could present it to the House.

Mr Sterling: No problem.

The Chairman: Is that your wish?

Mr Kormos: Quite right. What are we looking at there? Holy cow, I do not understand how the subcommittee decided that Bill 4 was going to be dealt with. It looks like a little legerdemain.

The Chairman: A little what?

Mr Kormos: Legerdemain.

The Chairman: You certainly have some unusual words. I have never heard of it.

Mr Kormos: There is more where that came from. I have not reached into my full lexicon yet. We will get into that some day. In any event, it is interesting that the bill is omitted from—

The Chairman: But that is what we are governed by.

Mr Kormos: Yes, but how did that happen?

Mr Polsinelli: Which bill are you talking about?

The Chairman: Bill 145, the imitation gun bill.

Mr Kormos: I suspect that what happens is, never mind what the subcommittee decides, somebody on the government side says: "Oh, well, they can go pound salt. We are not going to deal with that even if the subcommittee decided we are going to deal with it." That is what happened here.

I am sure it is not a typo, because the Hansard people are so darned competent, and there you go. What is the process here? Should the subcommittee be disbanded? Is it sort of like the king of Italy during the reign of Mussolini, merely symbolic? Are we like Umberto, or does the subcommittee really have that much significance? What is going on?

The Chairman: You are asking a question which I think is rhetorical. You know the answer. We are guided by the standing orders, which are clearly stated in Hansard. As you say, they do not make mistakes, so that is exactly what we are doing.

Mr Kormos: So Bill 145 got plucked and Mr Farnan—

The Chairman: I have no idea but our authority to act is to deal with all bills that are in the standing orders and they are before you and they are clear.

Mr Kormos: The government is not interested in Bill 145 and replica guns. As far as the government is concerned, these hoods can keep on walking into corner stores and doing armed robberies with plastic guns.

The Chairman: It is not before us so I do not know what we are going to do, but I would like to get back to what you initially put forward and see whether or not there is unanimous consent that we adjourn today until two o'clock tomorrow.

Mr Pelissero: Ten o'clock.

The Chairman: Ten o'clock? Which is the wish, 10 or two?

Mr Polsinelli: I think we should give ourselves the flexibility of just a couple of hours of sitting time in the event that there is enough discussion on the Henderson report to keep us here all day. If we meet in the afternoon, we will conclude—

The Chairman: I am only anticipating the reason that Mr Kormos may

have asked for two o'clock tomorrow. I am hoping they will have their dissent prepared so that we will be able to deal with the matter totally by that time.

Mr Kormos: I am asking for two o'clock.

Mr Polsinelli: I would prefer 10 o'clock.

The Chairman: Let's deal first with the question of whether or not we should adjourn until tomorrow and then we will deal with the question at the time.

Mr Kormos: If I had said 10 o'clock, would Mr Polsinelli say two?

Mr Polsinelli: No.

The Chairman: Order. Do we have unanimous consent that we will adjourn today and deal with the Henderson committee report tomorrow? Is that agreed?

Mr Polsinelli: At 10 o'clock.

Mr Sterling: No. What did you say then? We are going to meet at 10? I cannot be here at 10, nor can Mr Kormos be here at 10 tomorrow morning.

Mr Polsinelli: How about 11?

Mr Sterling: No. We could be here at two.

Mr Polsinelli: We can just finish the report today then and you can attach your dissent.

The Chairman: We have unanimous consent that we will deal with it tomorrow. Now the only question is when. Do we have unanimous consent that it would be at 10 o'clock?

Mr Kormos: Okay, 1:30.

The Chairman: Is there unanimous consent that it be at 10 o'clock?

Mr Polsinelli: How about one o'clock? Come on.

The Chairman: Is there unanimous consent that it be at 1:30?

Agreed.

The Chairman: I would trust that you will have your dissent here for us tomorrow, Mr Sterling.

Mr Sterling: Yes.

Mr Kormos: Your trust is a strange word to use around here in view of Mr Conway's orders.

The Chairman: Perhaps I could ask you to undertake to have that here tomorrow to deal with this?

Mr Kormos: Yes. I am chucking "trust" out of my vocabulary.

The Chairman: But you are undertaking to have your dissent here tomorrow; is that correct?

Mr Kormos: You bet your boots.

The Chairman: All right. We stand adjourned until 1:30 tomorrow.

The committee adjourned at 1117.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
ORGANIZATION

WEDNESDAY 2 AUGUST 1989

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr Offer

Jackson, Cameron (Burlington South PC) for Mr Runciman

Kozyra, Taras B. (Port Arthur L) for Mr Kanter

Pelissero, Harry E. (Lincoln L) for Mr Chiarelli

South, Larry (Frontenac-Addington L) for Mr Mahoney

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 2 August 1989

The committee met at 1348 in room 151.

REPORT OF THE ONTARIO PROVINCIAL COURTS COMMITTEE, 1988
(continued)

The Chairman: I recognize a quorum. For the benefit of those who may be watching, this is the standing committee on the administration of justice. We will be dealing with the Henderson report, which deals with the question of judges' salaries. Do you all have a copy of the draft report that was prepared by our researcher?

Mr Pelissero: Yes. We are prepared to move it.

The Chairman: It has been drawn to my attention that in the draft report which has been provided to us there is a typo at page 1, paragraph 4. If you want to make a correction to it, the second line should read "and allowances" and should continue on. There should not be a capital there; it should read "and allowances the Henderson committee undertook a difficult and laborious task." Has everybody got that?

Mr McGuinty: Mr Chairman, on page 2 as well, there is a misuse of the subjunctive.

The Chairman: What was that?

Mr South: An attempt at humour.

The Chairman: All right. Mr Jackson, you may not be aware, or maybe you have been advised by Mr Sterling, that we adjourned yesterday until 1:30 pm today to allow either or both of the opposition parties to prepare and present a dissent from this report. I am wondering if those are available in writing.

Here is Mr Sterling now. Maybe he can provide it. Mr Sterling, I was just indicating to Mr Jackson that we had adjourned until today to allow you to prepare a dissent.

Mr Sterling: Yes.

The Chairman: Perhaps if you could provide it to the clerk, so the other members of the committee can see it.

Perhaps I will give the members an opportunity to read it.

Mr Polsinelli: Mr Chairman, does the New Democratic Party also have a dissent to this report?

Mr Kormos: The New Democratic Party joins with Mr Sterling.

The Chairman: All right. Mr Sterling so agrees.

Mr Kormos: I am not even sure Mr Sterling prepared it.

Mr Jackson: A couple of lawyers did.

The Chairman: You did not double bill here, guys?

Mr Kormos: We will check with Mr Kopyto on that one.

The Chairman: I would caution you that we are on television, Mr Kormos.

Mr Kormos: I know that. I would not have said that if I did not know we were on TV.

Mr Pelissero: So the title then, for clarification, is "Dissenting Report of Norman Sterling and Peter Kormos and the NDP", or what do you want us to title it?

Mr Sterling: How do we normally do these things, Mr Clerk, a dissenting report? Is it of an individual or a group of individuals?

The Chairman: I think they are probably signed by the people who have endorsed the dissenting report.

Mr Polsinelli: I am not sure that any individual under the standing orders is allowed to table a dissenting report. However, I understand that the practice has been in committees that opposition parties, with the consent of the committee, are allowed to table dissenting reports, and I stand to be corrected on that. If that has been the practice, I am in agreement with that practice.

I would not be in agreement to allow any individual member of the committee to table a dissenting report at this point; that is, if Mr Sterling would like to file a dissenting report on the part of the Progressive Conservative Party and Mr Kormos would like to join in that dissent on the part of the New Democratic Party, I think that would be fine, but we may be setting a dangerous precedent in allowing individual members of the committee to file individual dissenting reports.

Mr Sterling: I know I have done it.

The Chairman: I will respond to that, if I could.

Under the standing order 108(c), and I quote, "Every member"—and I underline member—"shall be permitted to indicate in a report that he dissents from a particular recommendation or a comment within the report. The committee shall permit a member to express the reasons for his dissent within its report."

Mr Polsinelli: Effectively, what that says is that the dissenting members may, within the body of the committee report, indicate the reasons for dissent with respect to specific recommendations. I am not sure what the opposition parties then are trying to do. Are they trying to file a dissenting report on behalf of the parties that they represent, or are they speaking in this committee as individuals?

Mr Sterling: When I come to this committee, I speak for my party, and I think Mr Kormos probably does as well, but my understanding of the standing orders is that any member can file a dissenting report and say whatever he wants to say in that report.

Mr Polsinelli: I am not disputing the content of your report, I am just questioning who the report is speaking for, whether it is speaking for yourself personally or whether it is speaking for your party.

Mr Sterling: My party has lodged the issue with me and therefore they stand behind me.

Mr Polsinelli: So then the title of this report would be that it is a dissenting report of the Progressive Conservative Party.

Mr Sterling: No, it is the member who is permitted to give the dissenting report.

Mr Polsinelli: On behalf of their party.

The Chairman: No, the way I interpret the rule, it says: "Every member shall be permitted to indicate in a report that he dissents from a particular recommendation or comment within the report. The committee shall permit a member to express the reasons for his dissent within his report."

I think Mr Sterling would be quite correct, even if it were just he or Mr Kormos, but I would draw to your attention the fact that I would interpret it as well to mean—and I have not quite got through your dissent yet—that you would dissent from particular recommendations. Unless this refers to dissenting from particular recommendations or comment within the report, then the dissent I would think would not be appropriate. That is perhaps something we can examine as to whether it does.

Mr Sterling: If you read the last paragraph, I dissent from all the recommendations made by the report.

Mr McGuinty: It seems to me, on a cursory reading of Mr Sterling's statement, that the basis of his dissent is not with reference to recommendations within the report but the manner in which the whole matter has been handled whereby there was action by the Chairman of the Management Board of Cabinet (Mr Elston) prior to consideration by this committee and therefore any subsequent action by this committee is somewhat redundant. Do I understand right, Norm? That is the basis?

Mr Sterling: I am doing two things in my dissent. First of all, I am saying that the way the consideration of this report unfolded in history points to the fact that it really is a useless procedure. I wanted to say that as basically a recommendation that I am making in my dissenting report.

Secondly, when the recommendations made by the committee vary from the Henderson report, I disagree with the variance. Therefore, I am saying in the last paragraph that I support each and every recommendation made in the Henderson report. So I am in effect rejecting all the recommendations put forward by the majority on this committee.

The Chairman: Could I just have a second.

Mr Polsinelli: That sort of slipped by me—rejecting all the recommendations made by the committee and the committee—

Mr Sterling: Where they vary from the Henderson report.

Mr Polsinelli: Where they vary from the Henderson report, so

therefore you are disputing recommendations 1, 2 and 3.

Mr Sterling: That is right.

Mr Polsinelli: Rather than your dissent indicating that you support every recommendation of the Henderson report, your dissent should indicate that you do not support the recommendations of the committee report—recommendations 1, 2 and 3 of the committee report.

Mr Sterling: Anybody who reads both of them can figure that out I am sure.

One of the nice things about the standing orders is that I do not have to write the report as the Liberal majority would like me to write the report.

Mr Polsinelli: No, but you do have to write them in accordance with the standing orders.

Mr Sterling: And I have.

Mr Kormos: I should indicate that I join with Mr Sterling on my own behalf and obviously on behalf of the New Democratic Party and on behalf of fair-minded thinking people across the province.

Secondly, this is a proper dissent to be attached to the committee report. It addresses everything that is contained in the report and recommendations of the committee.

Surely, Mr Chairman, if you are going to start interpreting that standing order, it has to be interpreted in the broadest sense and not in the narrowest sense. Otherwise, what you are doing is gagging or silencing—notwithstanding how attractive that might be to the government on occasion—opposition members.

It is painful to hear comments to the effect that somehow the dissent should be rewritten by the committee, perhaps sanitized by the committee, so that it does not have the biting edge it obviously is intended to have. So be it. It is an articulate and vehement dissent. Liberal members do not like it—so bad, so sad.

1400

The Chairman: I have no difficulty—

Mr Polsinelli: What we are trying to do is basically correct the emphasis of your report in that how can you, on one hand, say that you reject the committee's recommendations and on the other hand say that you totally accept all the recommendations in the Henderson report, when a substantial portion of this committee's report endorses the recommendations of the Henderson report? Effectively, you cannot say "yes" and "no" at the same time, because that is what you are trying to do.

Mr Sterling: We did not say "yes."

Mr Polsinelli: Yes, you are saying that you reject the committee report and the committee report endorses substantially all of the Henderson committee report. On the other hand, you are saying, "We endorse all of the recommendations in the Henderson report." That does not make sense no matter

how you try to slice it. It is not a question of gagging. It is a question of abiding by the standing orders. The standing orders indicate, according to the clerk and the chairman of this committee, that you are allowed to file, as a member of this committee, a dissent with respect to committee recommendations that you do not agree with. You are dissenting from the committee recommendations that endorse the report and yet, in your dissenting report, you indicate that you endorse the report. How can a fair-minded, logical person make sense out of that?

Mr Sterling: I cannot make sense out of your statement, but perhaps, Mr Chairman, so that anyone who is so fortunate as to be listening in this afternoon might know what we are talking about, my dissent reads as follows:

"The Henderson report, which was tabled in the Legislature on October 26, 1988, was brought forward as a matter to be considered by the justice committee by the insistence of the opposition parties in early February, 1989. Until that time the government representative on the subcommittee of the justice committee, who controls the agenda of the justice committee, had expressed no urgency to deal with the Henderson report.

"On May 5, 1989 the Chairman of Management Board of Cabinet announced salary changes for provincial judges before the justice committee had a chance to deal with the Henderson report. The recommendations in the report of the justice committee do nothing more than justify the actions taken by the Chairman of Management Board. Even though the Chairman of Management Board took action before our consideration, the Liberal majority were reluctant to show any independence.

"It therefore appears to me that the review of the report of the justice committee of the Legislature is nothing but a waste of time under the present majority Liberal government. The Chairman of Management Board has shown disrespect for the committee in precipitating its work by making his announcement even though the Henderson report was under active consideration.

"The reference of the report to the committee was nothing more than a stalling tool in the hands of the Attorney General and the Chairman of Management Board.

"I therefore feel that the report of the Ontario Provincial Courts Committee should be made public and placed before cabinet for a response in a given period of time.

"At best, it is unclear what function a legislative committee can fulfil in this process. It is patently obvious under this government that the reference to the justice committee does nothing but prolong the process.

"I believe that the Provincial Courts Committee undertook their work in a logical fashion and came to reasonable conclusions. I therefore support each and every recommendation in the Henderson report."

I think that is pretty clear.

The Chairman: Thank you, Mr Sterling. I think, despite what has gone back and forth among the members of this committee, that it is really my job to decide whether that is in order within the terms of the rule of the standing orders.

I would like about 10 or 15 minutes to think about that, so I am going

to ask that we adjourn for 10 or 15 minutes to give me an opportunity.

Mr McGuinty: Mr Chairman, what are the operative words there, so that we can think about it too?

The Chairman: You have a copy of the dissent, but the standing order says, "Every member shall be permitted to indicate in a report"—therefore, there would be no difficulty with Mr Sterling doing it personally—"that he dissents from a particular recommendation or comment within the report."

Mr McGuinty: Within?

The Chairman: Yes. "The committee shall permit a member to express the reasons for his dissent within its report." So I would find that all paragraphs except the final one would be appropriate, but I want time to think about that. My only difficulty would be with the final paragraph; perhaps it should say that within the framework of the standing order you dissent from whatever particular recommendations of the report; by doing that, I guess you are saying the ones you do support, which would be the entire Henderson report.

Mr Sterling: Can I just say that in my 12 years as a member of the Legislature, I have never seen the arrogance of a majority government suggest to a member of a legislative committee the content of his dissenting opinion.

The Chairman: That is hardly what is happening. The question is whether it fits within the standing order. I have no difficulty with what you put in your dissent; that is your prerogative. What I want to determine is whether it is in order within the terms of the standing order. I would like about 10 or 15 minutes to think about that.

Mr Polsinelli: Prior to adjourning for 10 or 15 minutes, I was wondering if we could make some comments on the committee report, so that perhaps our research officer could think about it within that 10- or 15-minute time frame.

The Chairman: Do members have any difficulty with that, or would you rather have a ruling on the dissent first?

Mr Kormos: I would rather have a ruling on the dissent first.

The Chairman: We do not have unanimous consent to do that. I think we should deal with the dissent first, Mr Polsinelli. We stand adjourned until 1:25.

The committee recessed at 1408.

1437

The Chairman: We have passed the hour of agreed adjournment. I wonder if we might have the consent of the committee to deal with the majority report or at least start with it. I do not wish to deal with the question of the dissenting report in the absence of Mr Sterling, and I understand he will be here momentarily. Perhaps we could go on with the majority report.

Mr Kormos: In view of the fact that he is going to be here momentarily, why would a mere moment's wait not be appropriate?

Mr Pelissero: We are 10 minutes late now.

The Chairman: Here he is now.

Mr Kormos: There was a shrill comment from Mr Pelissero: "We are 10 minutes late now." You will recall the other day, Mr Chairman, when I came to the standing committee on administration of justice, when the House was still sitting; I sat there and you were waiting for Liberal members to show up. Notwithstanding that you have a whole half dozen of them on the committee, there were not even enough Liberal members who showed up to form a quorum. By God, it was 15 minutes, then 16 minutes and then 17 minutes. I told you I welcomed that, because I was going to bring it up at one point. Now I have, so I have used it; I have used up my chit.

The Chairman: Thank you for the footnote.

Mr Sterling, I have had an opportunity to consider your dissent. I think it is probably inappropriate to set a precedent by interfering with the content of a member's dissent. I think it is a long-standing practice not to do so. I think, as well, there are special circumstances here in that we are dealing with a report of a report. After giving it some consideration, I think one could conclude from your dissent what you are trying to say, so I am going to rule that it is in order.

I would suggest to you that you might wish to speak to the research assistant here, Susan, with reference to the factuality of the third paragraph from the bottom, where you say the Report of the Ontario Provincial Courts Committee should be made public. It is my understanding that that is a public document. It has been printed by the Queen's Printer for Ontario. I do not know whether that was what you were referring to.

Mr Sterling: I was not referring to anything. I was suggesting that that is the procedure I would foresee that should go on in the future; in other words, I feel that all that should be done by the provincial courts committee is that it should be made public and placed before cabinet, and the cabinet should be given a limited time period to respond.

The Chairman: Would you like to clarify that by saying "made public in the future"?

Mr Polsinelli: I think Mr Sterling could leave it the way it is. It is clear and it throws an interesting light on the balance of his dissent.

The Chairman: Mr Sterling, you have the floor. Do you want to put in there that it be made public in future or something to clarify your position?

The clerk indicates that once again I am getting into a discussion of content. It is your dissent.

Mr Sterling: There are two things I would do. Mr Kormos would like it to be entitled the Dissenting Report of Norman Sterling and Peter Kormos, and the "I" should be changed to "we" in three places, I think. I do not know whether that means a change in the verbs' number; I do not believe it does.

I would just ask that the third last paragraph read, "We, therefore, feel that future reports," instead of "the report."

The Chairman: Susan has brought to my attention that subsection 88(4) of the Courts of Justice Act reads as follows,

"Recommendations of the committee and its annual report under subsections 2 and 3 shall be laid before the Legislative Assembly if it is in session or, if not, within 15 days of the announcement of the ensuing session."

Mr Sterling: Yes, but what I am suggesting is maybe a legislative change as well. What I am saying is that once you lay it in front of the assembly, in effect you then refer it to the justice committee automatically; it is before this committee, especially under the new standing orders. I just want to make it public; I do not care how it is done.

The Chairman: Do we have unanimous consent that the report be changed by adding Dissenting Report of Norman Sterling and Peter Kormos?

Oh. We do not need unanimous consent; we can simply agree to it. We will have research make the appropriate changes before the report is filed, to pluralize where necessary. And what was the wording you wanted for the third paragraph from the bottom?

Mr Sterling: "We, therefore, feel that future reports..." instead of "the report."

The Chairman: Is there any further discussion on either the dissenting report or the majority report? Mr Polsinelli, which is it?

Mr Polsinelli: The committee report. I think we are quite satisfied with the report that has been written by our research officer. We have had some further discussion with her, however, in terms of amending a certain provision of it, emphasizing perhaps a bit more strongly this committee's recommendation that judges' salaries be indexed, so I am moving that—

The Chairman: What page is this?

Mr Polsinelli: We are on page 1 of the report, entitled Introduction. I move that the first two paragraphs immediately following the heading Recommendations be deleted and the following substituted therefor:

"The committee notes that much of the evidence presented to it and the discussion during committee deliberations concerned recommendations 3 through 8 of the Henderson report. Having considered the report, together with the submissions of the witnesses, the committee endorses all of the recommendations of the Ontario Provincial Courts Committee except recommendations 3, 4, 7, 8 and 28. In doing so, the committee wishes to emphasize its endorsement of the indexation of the provincial court judges' salaries as provided in recommendation 6 of the Henderson report."

That is substantially what is within those two paragraphs right now, with the additional provision emphasizing the indexation that is referred to in recommendation 6 of the Henderson report.

The Chairman: We consider that to be part of the report. Perhaps the clerk can get copies of it for us.

Mr Polsinelli: I would be prepared to give this to the clerk as soon as we finish our deliberations.

The Chairman: All right. He can make copies for all members.

Is there any further discussion on either the majority report or the dissenting report?

Mr Kormos: I suppose it has to be said—it does not have to be said, but I will say it one more time; perhaps others will as well. Those comments are, of course, contained in the dissent of Mr Sterling and myself. The whole exercise was really so bizarre.

Perhaps the most embarrassing part of this recommendation, maybe even for the Liberals on the committee, was the comment, "Considering all of the evidence, the committee concurs with the salary adjustments announced by Management Board of Cabinet on May 5, 1989, including the two retroactive increases of four per cent...and 4.6 per cent." That is a pretty bold statement, because really what the Liberals on the committee chose to do was obey the master's voice.

Management Board had announced those salary increases. Indeed, it was commented on during the course of the committee by government members that Management Board's having done that, the committee could not do too much about it because, as I say, the master had spoken.

The committee really abdicated its responsibility in simply nodding its head, like one of those little dogs in the back window of your car, in response to what Management Board decided were going to be the increments for the two years prior to this year. Government members on this committee, by adopting that, violated not just the essence or the spirit but the letter, the written word of the agreement that was made between the Attorney General (Mr Scott) in a follow-up letter indicating that cabinet endorsed the agreement with the Attorney General and the Association of Provincial Criminal Court Judges, and that was to make any salary increases retroactive to the genesis of this whole process. We are talking, of course, about 1987.

So that particular paragraph, paragraph 1, on salary, is really one which does not even have intellectual integrity, because it speaks of "Considering all of the evidence, the committee concurs...." What the committee considered was the fact that Management Board said, "That is the way it is going to be and the committee be damned." There really was no consideration of the appropriateness of violating the agreement the government had made with the provincial judges' association.

There was no consideration, as I recall, of the appropriateness of the increments of four per cent and 4.6 per cent for 1987 and 1988 respectively. There was no consideration of the appropriateness of not abiding by the spirit of the whole process and making the salary adjustment effective as of 1987, because that is when this whole process started.

In addition, it is peculiar that the committee—and of course, it was the government members—would also make recommendations 2 and 3 in this, because it remains that the Henderson committee analysed the issues, heard piles and piles of evidence and formulated a set of recommendations that were in themselves sound, that could not be critiqued and were not critiqued as being unsound by any member of this committee, least of all by the government members, who chose to make recommendations above and beyond them.

It was a bizarre little exercise. The saddest thing about it, as I say, is that the government demonstrated that it was not prepared to abide by the agreements it made. Of course, I am speaking of the Scott letter. That agreement has been broken. It was not a promise; it was a contract. I am used to broken promises, but this was a written agreement that was broken. That is a pretty sad day, but so be it.

1450

The Chairman: Any further discussion on either the majority report or the dissenting report by any members of the committee, or are you prepared to vote?

Mr Pelissero: No.

The Chairman: Shall the report, as amended, carry?

Mr Sterling: Can I see the amendment? I would just like to see the wording.

The Chairman: Yes. All members should have before them the wording change that has been moved by Mr Polsinelli to be included in the report, replacing the first two paragraphs under the word "Recommendations" on page 1. Have you read it sufficiently, Mr Sterling?

Mr Sterling: Sure.

The Chairman: Those in favour of the motion by Mr Polsinelli?

Those opposed?

Motion agreed to.

The Chairman: Are you prepared to vote on the report as amended?

Mr Kormos: I would like a recorded vote on this.

The Chairman: A recorded vote has been asked for by Mr Kormos.

I should explain, and it probably needs no explanation, that the dissent is as a matter of right under the standing orders. This vote for reporting it to the House is reporting the majority decision.

The committee divided on whether the report, as amended, should be reported, which was agreed to on the following vote:

Ayes

Carrothers, Kozyra, McGuinty, Pelissero, Polsinelli, South.

Nays

Jackson, Kormos, Sterling.

Ayes 6; nays 3.

ORGANIZATION

The Chairman: I had suggested that we might have a briefing on Bill 4 tomorrow. I understand that is not possible. However, it is possible for a briefing to be made available to us at two o'clock on 28 August, when next we will sit. I gather that is agreeable to the committee.

Mr Kormos: Mr Chairman, perhaps you can help. I know the rearranged schedule was announced on Monday of this week. I was, as you know, made aware

of it yesterday. This committee was, through a subcommittee, set up and designed to meet throughout the month of August considering a number of bills. None of the proposed meeting weeks involved travel. They were all proposed subject to a suggestion of a further week which might entail travel, but that was not considered likely.

It is just incredible that everything has been wiped off the record or off the books, all the books have been wiped clear until 28 August, following through with Bill 4. It seemed to me there was a whole pile of things this committee could have started dealing with. Heck, I guess Bill 149 was one of the things the committee could have started dealing with.

I just do not understand why this valuable time is being put to waste. I am talking about the months of August and September, when the House is not sitting and the committee members are capable of meeting four times a week and really getting down to the nitty-gritty. It seems to me a real waste of time and, quite frankly, money in the total scheme of things.

The Chairman: It is not; it is actually a saving.

Mr Kormos: I am not sure of that, because what happens during the course of the months that the House is sitting is that the committee is only going to meet twice a week for modest lengths of time. So that is not much of a saving.

The Chairman: Yes, but there is no emolument paid, as there is while this committee is sitting during the off-session of the Legislature.

Mr Kormos: Are committee members paid for coming here in the off-session?

The Chairman: If you do not know that by now, then—

Interjection.

Mr Kormos: I had not reflected on that. I was not worried about it.

The Chairman: I appreciate what you are saying.

Mr Kormos: But it is just incredible that all that stuff was wiped clear. Really, we get paid for coming here when the House is not sitting?

The Chairman: That is right.

Mr Kormos: How much?

The Chairman: I am not sure, but we can flash it up on the screen afterwards.

Interjection: He's pulling our leg.

The Chairman: Actually, I am not sure what it is. In any event, Mr Kormos, as you know as well, we are given certain work to be done and that is all we can do. We had anticipated that Bill 2 and Bill 3 might take a longer time; they did not.

In any event, I would indicate that there is briefing available, if you wish it, at two o'clock on 28 August. I gather, hearing no dissent, that is acceptable.

I might add that before you is a brief that was received late from the Canadian Bar Association. I had the clerk place copies of that before each of you. It may be some interesting reading with reference to future events of those bills.

Having said that, this appears to be all the work we have for today so we stand adjourned until 28 August at two o'clock in the afternoon.

The committee adjourned at 1456.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989

MONDAY 28 AUGUST 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Epp, Herbert A. (Waterloo North L) for Mr Offer

Johnson, Jack (Wellington PC) for Mr Runciman

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon Ian G., Attorney General (St. George-St. David L)

Moliner, Marie, Counsel, Equality Rights Branch

From the Police Association of Ontario:

Jessop, Neal, President

Roland, Ian J., Legal Counsel; with Gowling and Henderson

Connolly, Mal, Administrator

From the Metropolitan Toronto Police Association:

Lymer, Art, President

From the Toronto Mayor's Committee on Community and Race Relations:

Perry, Lloyd, Chair, Policing Subcommittee

Sri-Skanda-Rajah, Sri Guggan, Policing Subcommittee

Maloney, Peter, Policing Subcommittee

From the Canadian Civil Liberties Association:

Borovoy, A. Alan, General Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 28 August 1989

The committee met at 1413 in room 228.

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989
(continued)

Consideration of Bill 4, An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984.

The Acting Chairman (Mr Mahoney): I would like to call to order the meeting of the standing committee on administration of justice. My name is Steve Mahoney, not Bob Callahan. He has apparently phoned in and he is tied up in traffic; so he will be here shortly. In the interim, I will attempt to chair this meeting.

Bill 4 is an Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984, and we are resuming our public hearings today on that bill. Hearings were held in March 1989: in Thunder Bay on 28 March, Ottawa on 29 March and Windsor on 30 March. A summary of recommendations from those previous presentations has been prepared by research officer Susan Swift. That summary has been distributed to members of the committee and copies are available here with the clerk for anyone in the audience who would like them.

Our committee is scheduled to sit today, this afternoon, Tuesday morning and afternoon, Wednesday and Thursday morning and afternoon. However, before the committee recesses today, I think we should have some discussion of that schedule, but perhaps not take up the time of the minister or members of the public who are here to talk to us today.

Our first item of business on the agenda is the Honourable Ian Scott, the Attorney General for the province, who will give us an overview and a briefing on the bill.

MINISTRY OF THE ATTORNEY GENERAL

Hon Mr Scott: Members of the committee, I am delighted to be here on this, I think the fourth day of your public hearings on Bill 4. Bill 4 has been outstanding for some period of time since its introduction, and we are delighted that we are now able to continue the public hearings and to get ahead with it.

Marie Moliner of the ministry is here and she can, and indeed I will ask her to, remind you of the salient features of the bill, as it has been some time since we have had a public hearing on it. Before she does that, however, I would just like to emphasize that, as you will know, Bill 4 permits municipalities across the province to opt into the commission which is established for the determination of police complaints in Metropolitan Toronto—the office of the public complaints commissioner—and which has been operative for a number of years. It is now run by the commissioner, Clare Lewis, a former judge of the provincial court (criminal division) in Ontario, who succeeded Sidney Linden, now the Information and Privacy Commissioner, who was in fact the first commissioner under the Metro scheme.

Anybody who reads the papers will be aware that the Metro scheme has had some critics on the police side. The Metropolitan Toronto Police have been concerned from time to time that they have been singled out, if I can use that phrase, for a kind of mechanism that is not imposed on other police forces in the province. On the other hand, there has been some concern from community groups that the commissioner's office has not been sufficiently aggressive in processing complaints that have come to his attention.

Points of detail aside, however, I think an independent observer—and I regard myself as one, because this act, the Metropolitan Toronto act, is one of the creations of the late, great Conservative government in Ontario, which expired not before its time in 1985—would say that the Metro mechanism has on balance worked reasonably effectively in the interests of the public. The purpose of this bill, of course, is to permit other municipal councils that elect to do so because of their own community needs to opt into the mechanism.

Having said that, Mr Chairman—ah, we have a new Mr Chairman—I will ask Marie to remind you of the salient provisions of the bill.

Ms Moliner: I have provided the clerk with several copies of a package of information about how the Metropolitan Toronto system works. I will be referring to some of that information, if you want to read along the charts on the second page, and I will refer you to the other pages as we go through it.

The system in Toronto, as the minister has told you, was in place in 1981. Essentially, it provides a mechanism whereby a member of the public can make a complaint against a Toronto police officer at one of three locations: a police station; a police public complaints investigation bureau, which is set up especially to investigate complaints about Toronto police officers; or at the office of the public complaints commissioner, which is the civilian office which investigates complaints against the police at a point during this process.

Once the complaint is made at one of the three locations, it is sent either to the police complaints bureau, if it did not originate there, or to the office of the public complaints commissioner. The complaint is usually from then on investigated by the bureau, except under certain circumstances, which I will go into later.

There are ways that the complaint will be resolved which do not involve a full investigation. It can be informally resolved on the agreement of the subject officer—the officer who is complained about—and the complainant; or it can be withdrawn by the complainant; or, if it is deemed by the chief of police to have been made in bad faith or to be frivolous or vexatious, it can also be terminated at that stage.

In most cases, though, the complaint is investigated by the public complaints investigation bureau. That bureau is responsible for sending out an interim report within 30 days of receiving the complaint and every 30 days thereafter until the complaint is finally resolved by a decision of the chief of police.

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Once the complaint has been sent to the chief of police with a final report, the chief must decide on the merits of that complaint what course of action to take. He can decide that no action is warranted, in which case the

complainant has the right to request that the public complaints commissioner review that decision, or the chief can decide that some action is warranted: That can involve a criminal charge, a board of inquiry, which is a public hearing with a civilian panel of members, a Police Act hearing, or that the officer be counselled or cautioned.

When the complainant is dissatisfied with the decision of the chief of police, there is a form he files with the office of the public complaints commissioner requesting a review of the chief of police's decision and the investigation which led to that decision. The commissioner obtains the police complaints bureau's full investigative file and may conduct additional investigation if necessary. The commissioner has broad powers of investigation, including the right to enter a police station, examine books, papers and documents, and the right to apply for an order to enter and search other buildings.

During the course of the review, the civilian investigators at the office of the public complaints commissioner will as well issue 30-day reports to the complainant and the subject officer. Following the completion of the commissioner's investigation, the commissioner has to decide whether any action is merited. The choices available to the commissioner are whether or not it is in the public interest to hold a hearing, or he may also choose to make recommendations to the Board of Commissioners of Police of the Municipality of Metropolitan Toronto to change any practices in police policies and procedures.

The commissioner provides written reasons to the complainant and the subject officer and the chief of police when he decides that no further action is warranted. If the commissioner decides that a public hearing is in order, a panel, appointed by the Lieutenant Governor in Council, is established to hear the complaint.

The chief of police and the commissioner are the two people who can order a public hearing. Either way, the panel can be composed of three people or one person, depending on whether the conduct is considered serious or minor. The persons who are appointed to the panel are appointed by the Attorney General and Solicitor General upon the recommendation of the municipality of Metropolitan Toronto, the Metropolitan Toronto Police Association and the board of commissioners of police.

One third of the panel is composed of lawyers, who always sit as chair when the offence is major and who sit as a single panel person when the offence is minor. The members are appointed on a rotational basis so that each panel would be composed of the next person in line for the next hearing.

The main features of the hearing process are that the burden of proof for the subject officer is that of the criminal burden of proof—beyond a reasonable doubt—and that the subject officer is not required to testify. The Statutory Powers Procedure Act, which governs all administrative hearings, applies to the hearings held under the Metropolitan Toronto Police Force Complaints Act. The Attorney General has carriage of the proceedings before the board of inquiry and directs which witnesses shall appear. Both the subject officer and the complainant have a right to counsel.

Following a decision of the board of inquiry, the panel, if it finds the officer guilty of misconduct, can impose penalties which range from dismissal to reduction in rank, forfeiture of days off, the loss of pay or reprimand. An officer who is found guilty of misconduct or a complainant who is dissatisfied

with the hearing can appeal to the Divisional Court on a question of fact or law but not on fact alone.

Essentially that is how the system works. The code of offences which governs the Police Act is also the same code of offences which applies to the Metropolitan Toronto Police Force Complaints Act. If you have any questions, I would be happy to answer them.

The Chairman: Thank you very much. Are there any questions from members of the committee?

Mr Kormos: With respect to the appeal procedure, why could there be nothing more creative about an appeal procedure less unwieldy than one to the Divisional Court? Was there consideration of designing an appeal procedure that was more summary, let's say, and more immediate, perhaps to a district court judge?

Hon Mr Scott: I was not here when this was put in the act, but I think the theory of the appeal mechanism to the Divisional Court was that, since the McRuer commission report about 15 years ago, almost all appeals from municipal or provincial boards, or judicial review applications against municipal or police boards, go to the Divisional Court. It was, I think, considered not inappropriate to take appeals from this board to the same court.

In short, it would have been perhaps out of the ordinary if the appeal from this board had been to a lower court. I suspect that was the theory.

Mr Kormos: Appreciating that, would the government consider designing an appeal procedure which is—again, I am assuming that others agree with me that an appeal to Divisional Court can be an expensive and time-consuming thing—would the government consider some creativity, perhaps being novel in this regard, because we are talking now about police officers not just in Toronto but throughout the province and perhaps in some remote parts of the province where access to Toronto courts may be difficult.

Hon Mr Scott: We are going better than that, because we are designing a whole new court system for you. The criticism made of the Divisional Court as the place to take these appeals, as I recall, generally comes from people who do not live in Toronto and who regard the fact that the Divisional Court sits in Toronto as a heavy burden on them, whether they come from Ottawa or North Bay.

You will be glad to see, under Bills 2 and 3 which this committee has just approved, that the Divisional Court will now sit in the eight regions of the province routinely; indeed, it will be made up of judges who are assigned to those regions. We hope the difficulty and the associated expense that would have occurred in bringing your cases down to Toronto to be appealed will be removed. It will be as easy as going to your regional centre in the future.

The Chairman: Anything further, Mr Kormos? Just let me see. Are there any other members who wish to ask questions? We will go to Mr Sterling, and then we will get back to you.

Mr Sterling: There was no mention of costs in your explanation. Can you explain how the present situation with Metropolitan Toronto works with regard to the cost and how it will work under this bill?

Hon Mr Scott: As you know, policing, apart from Ontario Provincial Police policing, is a municipal responsibility in Ontario, governed by a municipal board in most cases. The province, under its undesignated grant program in the Ministry of Municipal Affairs, makes grants to municipalities which they can apply, as they judge appropriate, to policing in their municipality or to other needs of the municipality.

Bearing in mind that costs of policing are a municipal responsibility and that this board is in fact in one sense a monitoring system of the chief in the municipality, it was proposed in the original bill that Metro Toronto and the province should share the costs of the police commissioner's office.

There are those who may think that is too advantageous to the municipality, because otherwise it would bear the total cost of the complaint mechanism in its municipality, but the province or the government of the day thought 50-50 was fair. Indeed, I think it can be said that the previous government was very generous to the municipalities in that respect. In this bill, we propose simply to continue that model of generosity.

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The Chairman: Mr Sterling, were you as well asking for costs on the Metropolitan Toronto one, the history of the costs for that?

Mr Sterling: I was aware it was—

Hon Mr Scott: You were referring to the division.

Mr Sterling: Yes.

The Chairman: All right. It is in your material.

Mr Sterling: I just wanted to say that is the proposal. Is that contained in the legislation?

Hon Mr Scott: I believe it is. I will look it up. If it is not in the legislation, the section in the existing act would pick it up. Just so there will be no doubt, we propose that municipalities that opt in will get the 50 per cent provincial contribution to the cost of running the system that the electors of Metropolitan Toronto get.

Mr Sterling: I think it was done by agreement before and my concern was that a municipality opting in, presumably in the third or fourth year of the office, could have the province withdraw from its commitment of a 50 per cent share. That was why I was wondering whether or not you might include it in the legislative framework to ensure the municipalities were going to receive at least that amount.

Hon Mr Scott: Let me look at that without prejudging it in any negative way. It would certainly not be our intent to withdraw from any arrangements we have made.

Mr Sterling: The second matter I have, and I have some correspondence with you, Attorney General, is the ability of a municipality to withdraw from having a complaints commission in its municipality provided adequate notice was given.

Hon Mr Scott: We very carefully considered that possibility and our instinct is not to permit opting out once a municipality has opted in. The reason for that is that we very frankly regard Bill 4 as the next stage of a process. We have a model that was dictated by special needs a decade ago in Metropolitan Toronto. We are taking that model on an optional basis to other municipalities. The end of that process will no doubt be a systematic model across the province applying to all municipalities.

We regard the bill as a step forward, but we do not believe that the municipalities opting in will want to take a step backward and so we have not allowed for that.

Mr Sterling: The follow-up question is, when are there going to be amendments to the Police Act to provide for another method of complaint against the police, because I think that goes hand in hand. This is a great concern I have with regard to a municipality getting into an expensive procedure, perhaps because it finds the existing provisions of the Police Act inadequate when there is a complaint against a police officer.

I think even the police would agree that the present process is probably not adequate from their standpoint. I do not believe it is adequate in terms of the public scrutiny of that process, but the problem is, and we have argued that this is taking us, let's say, on a scale of zero to 10, that we have a process now that may be rated two and this is taking us to 10 in a particular municipality, when in fact seven might serve adequately for that municipality. When can we expect the other process? Would you hold up the proclamation of this bill until the other process was in place?

Hon Mr Scott: The new Solicitor General who, you will remember, is the former Attorney General who used to appear before this committee, Steven Offer—

Mr Sterling: I did not know he was the former attorney.

Hon Mr Scott: That is indeed what you call them. You call them the present—

Mr Sterling: He did all the work.

Hon Mr Scott: I am just following that up.

He has told me that he intends to introduce his amendments to the Police Act, which as you know have been in the works and under very extensive consultation for a long time, as soon as possible. I envisage, for my own part, that he means by that over the next couple of months when the House comes back. He will have to consider the extent to which a police complaints process of a mandatory type is required under that bill. It will inevitably be required if the opt-in provisions only provide partial coverage. But I am quite confident that he will have those answers for you in plenty enough time so that it will be possible, if it is desirable, to proclaim the two bills at the same time.

Mr Mahoney: Just a follow-up to the Attorney General on the financing question: Currently the police are funded on a per household or per capita grant formula for all their broad programs. The concern—I can hear it now—from both the police commissions and the municipalities that will be required to pick up half the cost of such a new bureau in their municipalities will be that the 50 per cent provincial contribution to this particular

program could have some impact on the level of per capita or per household funding that is currently available to that municipality.

It could have a very major impact, particularly in the large regional municipalities. I just wonder if there is some way, either in the legislation or by minister's statement or some form of direction, that there could be some assurance that if they indeed do opt in and adopt this new concept, it will not impact on their level of funding.

Hon Mr Scott: First of all, Ms Moliner has pointed out that the appropriate section of the act is section 29, which provides an agreement that can be negotiated and in the case of Metropolitan Toronto has been negotiated on a 50-50 basis.

Before we conclude that we are imposing new duties on the municipalities in asking them to pay for them, we had better understand exactly what is happening. We are not imposing any new duties on anybody in a sense. Every municipal police force in Ontario will either have or will certainly want to have, as a matter of public policy now, a method for dealing with public complaints. I presume most of them have. It would be extraordinary to hear they did not. So they are already doing that work.

What this provides for is essentially a supervening monitoring system with another kind of hearing process. No municipality will be obliged to opt in and therefore will not be obliged to sustain any cost at all, unless the municipality wants to opt in. If it wants to opt in, this mechanism will be displacing, perhaps in a more efficient way, mechanisms that the municipal police force in that community already has. If they opted in, we would not want them to save any money particularly, so we say they should negotiate an agreement with us in which we will pick up 50 per cent of the cost.

Mr Mahoney: With respect, though, I think the concern of the municipal people is that they are going to find themselves, as a result of this bill, under some pressure to opt in, from local community groups that would like access to such a board. With the pressure they are put under, I could see their argument coming back to the community groups and to us: "The province has said we can opt in. However, it is very expensive and we are concerned that somewhere down the road it will affect our unconditional grants, which we get based on our population or based on our number of households."

If that is part of the negotiation settlement between the province and the local municipalities, once they pass a resolution deciding they wish to opt in, then I guess that is fine as long as we understand right at the outset that this is a separate program and should not affect their ability to fund their ongoing police programs.

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Hon Mr Scott: As you know, I cannot give you the kind of undertaking you need, in order to respond to that inquiry. Only the Treasurer or the Minister of Municipal Affairs can do that. The fact is that the program is optional, so if you do not want any additional expense, do not opt in.

Second, before you can conclude that there is additional expense to any municipality, you would have to make an assessment about the extent to which opting into this regime will introduce efficiencies or new mechanisms that will displace existing mechanisms. I presume, for example, municipalities that

are not part of the scheme already must have some kind of mechanism in dealing with these matters. The question is to what extent that mechanism will be displaced by this centralized mechanism, because the extent to which it is displaced will represent a saving to the municipality.

Those are all factors that can be taken into account when we look at the section 29 negotiations, but I think we have made it plain as a government that we regard the Metropolitan Toronto 50-50 cost-sharing model as the appropriate one. It would be misleading to tell anybody we intended to deviate from that.

Mr Mahoney: Just a final very short question: If the funding formula changed beyond the agreement as entered into between the requesting municipality and the province, would that requesting municipality, which has a program in place, then be in a position to cancel that agreement and opt out?

Hon Mr Scott: There is no opt-out provision. That refers to Mr Sterling's point and I just make the point again. But the flexibility of section 29 is very broad. I simply say regarding going into a section 29 negotiation with a new municipality, if we said to the municipality, "Look, we will give you 75-25," it clearly would not be long before Metropolitan Toronto would be around asking, "Why are you giving them 75-25 when you are only giving us 50-50?" The percentage divisions will have to be standardized, it seems to me.

The good news from the point of view of smaller municipalities is that presumably the extent to which they will utilize the system will be much less. The system is already in place to meet the needs of Metropolitan Toronto. If municipality X on the western boundaries of the city decides to opt in, the question becomes: "All right, they are going to share the cost 50-50, but they are going to share the additional cost. What is the new cost to the system of having them into it?" If they only produce, say, 10 complaints a year, the new cost to the system may be relatively modest.

Mr Kormos: The Attorney General indicates that the goal is to have this structure in place across the province and that every municipal police force is subject to it. If that is the goal and if at some point it is going to be established by virtue of statute, why is there this mere holding pattern now? Why is there the matter of opting in? I think it creates real sensations of unfairness; that is to say, the members of community A whose community has not opted in, the complainants if you will, do not have access to this type of structure, whereas complainants in an adjoining community do have.

Similarly, it creates great sensations of unfairness on the part of police officers because police officers in one community will be subject to a new and special type of investigative and disciplinary procedure, yet police officers in another community will not. Quite frankly, it appears to be one of the concerns of police officers here in Toronto that their sisters and brothers in, let's say, Peel are treated distinctively differently than they are here in Metropolitan Toronto, because of the fact that it is a one-city program at this point in time.

What is the rationale for not designing a system whereby it becomes universal, whereby members of every community across the province have access to this same type of procedure and whereby police officers across the province similarly are treated uniformly?

The Chairman: I knew that would get to a question.

Hon Mr Scott: I do not think I have made any secret that for a long time I have believed that the Metro system is an excellent system and would be well suited to the needs of any municipality in Ontario. If I were going to pretend otherwise, there are about six people in the room who could jump up and say, "You've changed your story."

I am committed to the scheme and believe it to be useful across the province. The question is whether you make that mandatory now or whether you have a phased-in approach, which is the approach of Bill 4. I think this bill has now been on the order paper for about three years, if not four years. The government has elected to move in this way.

The Chairman: Why not six?

Hon Mr Scott: No.

I hear what you say, but this is the decision the government has made. There are sensitivities across the province on the police side, on the municipal side and on the public's side that must be taken account of. We have decided not to charge the goal-line in the first minute of play; that is what it comes down to.

Mr J. M. Johnson: This is a follow-up on Mr Mahoney's and Mr Sterling's questions. If it is the government's intention some time in the future to have this scheme in place across the province, has any consideration been given to setting up what could be construed as a joint committee to look after the several municipalities? Many of the municipalities are so small and have such small police forces it would not make sense to become involved in this type of program.

Hon Mr Scott: You see, the good thing about the system at present is that the opt-in mechanism permits a very high degree of flexibility. For example, I guess they do not have their own police force, but if the township of Erin, which you represent so effectively as my member, decided with respect to its police force to opt in, my guess is that because of the size of the force, it would not get a complaint a year. Mr Lewis is not going to go out and establish an office there. What he is going to do is put an 800 number in the Wellington county phone book so that you can complain directly about the police by telephoning the 800 number.

Now if an investigator is needed to interview the chief or to monitor the investigator, in the case of a small township he would probably be sent from Toronto. In terms of boards of inquiry, we have made plain that we would want local boards. We would ask the municipality coming into the scheme to participate in nominating members.

On the other hand, it might be that if Guelph opted in it would be necessary to have a physical location there and a staff person there week-round, but either of those administrative possibilities are open, depending on the size.

Mr McGuinty: I would like to refer to a key point Mr Kormos made regarding why this is in fact optional. It seems to me the same logic that would make our Police Act universally applicable would suggest the propriety of making this complaints procedure uniform in somewhat the same way. It might be that the particular procedures outlined for Metro Toronto might not be

suitable in other parts of the province. There is life after Ajax, and perhaps some other forces might not want to follow this particular procedure.

My question is: Are all forces accountable? It seems to me inconceivable that there would be a police force in Ontario that does not have some kind of procedure for dealing with complaints, so that if we cannot have this particular one universally applied or imposed, we have the next best thing in the sense that police forces are accountable for how they handle these procedures.

1450

Hon Mr Scott: Clearly every police force is accountable to its community through the mechanism of its police board. So that in community X, if you as a citizen feel you have been improperly dealt with by a police officer, you can complain to the chief of police and following that, if dissatisfied, you can complain to the board of commissioners of police in the municipality. If you do not like that you can, I think, in certain circumstances, complain to the Ontario Police Commission. That is what a member of your constituency would do in order to assure the accountability of the police.

The Metropolitan Toronto bill arose as a response to two concerns. First there was a concern that there should be independent investigation, that the police should not be investigating complaints against themselves. That complaint tended to be advanced by citizens' groups. Then there was a concern that there should be independent adjudication. That complaint tended to be advanced by police associations. They did not believe that the chief should necessarily be adjudicating these complaints; they wanted independent adjudication. That is it, historically.

Under the Metro mechanism, the decision made was to permit police investigation under a monitoring system. Mr Linden was very aggressive in support of the proposition that that was necessary. He said, "If you take investigation away from the police, although we hope it wouldn't happen, it would give the police, if they were inclined to do it, every justification for stonewalling an investigation. What you have got to do is build into the system a system that makes them do the investigating under their chief and makes it monitored." It has worked well.

When the Police Act amendments come down, we will see what they contain with respect to complaints where the option of Bill 4 is not adopted. I cannot tell you what that decision will be.

Mr McGuinty: Thank you.

The Chairman: Any further questions? If not, thank you for coming.

I would like to point out as well that Ed Singleton, who is the chief administrative officer of the public complaints commissioner's office in the Metro area, is here. Mr Singleton is down at the far end.

Thank you very much; I appreciate the briefing. Anything further that you wish to add, or shall we move on to the first deputation?

The first deputation this afternoon is from the Police Association of Ontario, and unless there has been a change in the lineup, I understand we have Neal Jessop, president; Mal Connolly, administrator; Art Lymer,

president, Metropolitan Toronto Police Association, and Ian Roland, legal counsel.

Perhaps, if you four gentlemen are here, you could come forward and take a seat in those chairs at the table. There should be a microphone for each one of you. I would ask you, once you get settled, to identify yourselves for the purposes of Hansard and try to speak into the microphone so that we can preserve your statements for posterity. Whoever is going to lead off could perhaps introduce the other members.

POLICE ASSOCIATION OF ONTARIO

Mr Jessop: Minister, members of the Legislature, ladies and gentlemen, my name is Neal Jessop. I am president of the Police Association of Ontario. I have fulfilled that capacity for the last four years. I am a staff sergeant with the City of Windsor Police Force. Seated to my right is Mal Connolly, who is administrator of the Police Association of Ontario. He is also past president of the Metropolitan Toronto Police Association. Seated to his right is Art Lymer, who is the current president of the Metropolitan Toronto Police Association and holds the rank of staff sergeant there. Seated to my left is Ian Roland, who has been legal counsel to the PAO for a number of years.

I should tell you, I suppose, that I had the privilege of sitting on the joint committee of the municipal police authorities, the Police Association of Ontario, the Ontario Association of Chiefs of Police and the Ministry of the Solicitor General in discussions on the draft Police Act. It was a very enlightening experience for me. It was, I suppose, the first time in my association career that I have had the ability to put forth the thoughts of Ontario policemen in that particular type of forum. Generally, in previous years we were only allowed to make our representations in private, and for the first time in the history of the association, we felt we were part of the contributing process that in fact led to, I believe, a consensus on a number of poignant issues that all of you have raised. It will be difficult for me to separate the discussions we had from the issues I raise and questions that are raised by you, but I will attempt to do that.

I suppose a few years ago you would have heard from the Police Association of Ontario that we felt the civilian complaints review process was adequate and should not be changed in any way. Those were the days when local commissions and local boards dealt with civilian complaints. Of course, that is not the case now and that is not our position now.

Our position now is that we believe, as Ontario police officers, that there should be and will be in some cases a necessity for an independent review of public complaints. Those complaints may be against individual police officers. They also may be against the processes and the procedures of police forces themselves. We know that this is necessary.

In our discussions we tried to arrive at a reasonable alternative to the system that is now in place. As you know, Metropolitan Toronto now has the bill that was enacted in 1984. The rest of us deal with public complaints on the basis of local boards.

In the last year or so, Mr Drinkwater, who now heads the Ontario Police Commission, has been making junkets—I should not use that word—trips to various—

Hon Mr Scott: We make junkets.

Mr Jessop: He is not allowed to make junkets. He makes trips to various municipalities within the province and hears public complaints. I had an interesting discussion with him last week and reinforced my thinking.

In general, we believe this: We believe that in most cases, in all municipalities public complaints can be dealt with by the local chief and by the local board.

However, we also believe that at any point in the process where a member of the public makes a complaint and is not satisfied with the progress of his complaint, he should have the option of proceeding to an independent review body. We feel that in that way any individual who walked into a police station or a place where a public complaint can be made against the police would be continuously informed about the process of his complaint and at any point in the process he could and would be able to say: "Wait a minute. I'm not satisfied with the way you're handling this. I want out of your system and I want to go to a central group that can deal with my complaint."

1500

We are suggesting to you that that sort of process could be enacted without a great deal of difficulty in the process. We have some problems with the Metropolitan Toronto Police Force Complaints Act, but as the minister said, in some cases or in most cases it appears to be working. To be quite frank with you again, we believe that a change in the tribunal that hears, in the end, a public complaint, would go a long distance towards assisting the process for the whole province.

You have before you our brief on the matter. On page 7, I believe it is, we are suggesting that that final tribunal to which the citizen would go, where he is unsatisfied with the process, be made up of the three groups that are described in subparagraphs A, B and C. We are suggesting, "One third of the members of that panel shall be persons who are members of the Law Society of Upper Canada who are recommended by the Solicitor General (and/or Attorney General)."

Before I go on I should say to you that it is our belief that public complaints should finally rest with one ministry. That ministry should be the Solicitor General's. My personal feeling is that you might question us as to whether or not the Solicitor General, being responsible for policing, could be responsible for police complaints. It has been suggested to me by the Honourable René Marin, who is in charge of public complaints against the Royal Canadian Mounted Police, that it is an appropriate ministry to deal with it in the event that the public complaints commission's report would be submitted to the Legislature directly without having to go through the hands of the Solicitor General. That seems to us an appropriate safeguard for that particular process.

If I might get back to subparagraph A, we are suggesting, "One third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are recommended by the Solicitor General."

"One third of the members of the panel shall be persons the appointment of whom the municipal police authorities and the Association of Municipalities of Ontario"—you are quite familiar, I am sure, with those two organizations—"have jointly recommended in writing to the Solicitor General.

"One third of the members of the panel shall be persons recommended in writing by the Police Association of Ontario to the Solicitor General (and/or the Attorney General) for appointment."

It says below that: "This body should hear all citizens' complaints." We are suggesting that that might be slightly misleading. We are suggesting that that body should hear all citizens' complaints that cannot be dealt with to the satisfaction of the complainant by the local board.

Our reasoning with respect to probably the most contentious part of that triparty board, being C---of course we have an interest in this particular process---is that you must have one member of that particular panel who is familiar with the process of policing from the ground up. I might say to you that this is a divergence, I guess, from the makeup of the Metro panel. One of the problems we have perceived with the Metro panel is---there is no other way to say this---that it appears in some instances that the panel and its chairman have removed themselves from the role of an independent judicial group and have become involved in the press and in bantering in the press regarding the act itself and the process of the act and the credibility of the act, and in our view, it has led to a lack of credibility of the process and the group itself on behalf of police officers.

We are of the belief that this particular panel must be a blue ribbon group, and it must be removed from public bantering about the quality of the organization, particularly in the press. It must above all be fair to the citizen and it must above all be fair to the police officer, and when something happens and the dust has settled, it must have the credibility to deal with the particular problem and make a judicious, fair ruling. Unfortunately, after Mr Linden, that has not been the case, in our view. It is unfortunate, and that is one of the reasons why we have asked for a revision of that particular panel.

These types of processes must never be seen to be or be some kind of a forum where we advertise for complaints, judge the police officer and the civilian in the press and then somewhere along the line read on page 18 about the actual disposition of the complaint. This panel must have the credibility of everyone involved in it, and that is why we have involved the people we have suggested.

I was reading the initial 1981 bill last night. At one point it said, and to be frank with you I do not know whether it still says the same thing, "One member of the panel must have legal training." We think in some cases that is what you have had in Metropolitan Toronto, and that is not adequate. The people who are appointed to this panel must have the credibility of the law society, they must have the credibility of police officers and they must be able to remove themselves and do things in a judicious way rather than promote the process or demote the process in the press.

One of the things Mr Justice Morand described to me as being a necessity in public complaints legislation is the necessary ingredient that if all but the most serious complaint is resolved between the police officer and the public individual, there must be a rehabilitative process for the police officer. He talks about that a great deal. He says one of the things we should think about and think about a lot, is that if the policeman is finally adjudged to have made a mistake, he certainly should not be making that mistake again when it comes to something he did to or for a public individual.

We have addressed that in our discussions, I hope. We are suggesting

that the minister's bill and the process that now exists could be welded, so to speak, into an acceptable process for the whole province, whereupon at any point the individual might say: "I am not satisfied with this. I want someone out of Toronto or wherever to come and investigate this and I want this complaint heard before a tribunal." I am speaking in general terms; all the necessary machinery could go into place to do this.

Some of you gentlemen have spoken regarding costs. Police costs are a big issue everywhere in this province. With all due regard to the minister, we are concerned that even if this system came into play and there was a 50-50 cost-sharing, somewhere along the line the 50 per cent for the municipality would probably come out of the police budget. Most of you are reading the paper enough to know that we have enough pressures on our budgets right now, particularly in relation to the drug problem, that we do not need that sort of pressure.

1510

We are suggesting that the Metropolitan Toronto act is a good act with some necessary revisions. I am going to ask Mr Roland to speak to the evidentiary provisions of that act. We are also suggesting that if we stand back here and compromise and discuss, we can arrive at a position where everyone who has a complaint can have it heard to his or her satisfaction at a minimum cost to everyone and at a minimum inconvenience to everyone.

I have asked Mr Roland to speak to you on the rules of evidence in relation to some things we are dissatisfied with in the Metro act and also the burden of proof. I would defer to him.

The Chairman: Just before you start, we have other people to hear from and we have allocated a certain amount of time for each group. Because of the shortness of the briefing, you have an extra bit of time. If the other gentleman is going to speak, you can use all the time, if you like, to speak to us. If there is time left over, there may be questions from the members. We will continue on until 3:45 pm.

Mr Roland: I will be very brief.

You will see that on page 9, under the heading "The Rules of Evidence," the brief from the Police Association of Ontario addresses the issue of the standard of evidence to be received by an inquiry tribunal. The present situation under the current legislation, to be continued by Bill 4, is that the standard of evidence to be received is simply that set out in the Statutory Powers Procedure Act; that is, a very relaxed rule for the reception of evidence; hearsay and all kinds of evidence that would not normally be admissible in a court of law or admissible before the board of inquiry.

What the brief then requests is that the statute be amended to permit only that evidence that would be admissible in a court in a civil case, corresponding to a good deal of legislation in this province governing other professions such as health professionals, architects, engineers and so on, where the standard for the reception of evidence is the standard that is applied by a court in a civil case.

One of the problems with the current act as it stands is the perception of the police officers in Metropolitan Toronto that anything goes, that any kind of evidence can be received in these proceedings that involve them in complaints. That is not the kind of standard they are used to in their

professional lives as police officers. They have to govern their professional lives in the prosecution of criminal offenders or accused by the standard applicable in criminal courts. What you have, though, in this province, and I do not think it is unusual across Canada, is that you have for professional bodies a standard of evidence that is the same as that in civil courts.

As far as the rules of evidence are concerned, it is not much different than criminal courts. The rules, as we lawyers know, are to a very large extent the rules of evidence that have been developed by the courts over centuries, and it is simply that standard that we ask to be applied to police officers as well under this system. That will go a good distance in allaying the kinds of concerns police officers have who feel subjected unfairly to a process that permits any kind of evidence to be introduced. Whether it is or not, that is the perception, that any kind of evidence can be introduced against them in the current process and therefore that it singles them out unfairly when compared to other professionals.

As far as the burden of proof is concerned, let me make it clear that there is a clear distinction between the admission of evidence, the standard which you apply to the introduction of evidence, and what you do with that evidence; that is, what standard you measure it against to make a finding.

The standard that is in the present legislation is that of "beyond a reasonable doubt." Police officers understand that. Again, it is what they live with. It is the kind of standard that applies when they come to participate in the prosecution of accused in courts. That is the kind of standard they appreciate and live with on a daily basis. That is the standard that should continue. We do not ask that that standard be changed at all.

There has been, for instance, in some of the submissions that have been made in the past to the the Attorney General dealing with amendments requested to the legislation, a melding of that concept of, on the one hand, the evidence that is to be introduced, and on the other hand, the standard against which one applies that evidence that has been received. We do not ask that that standard be changed. Indeed, for professionals, although the courts have said it is the civil standard, they have said that where a professional life is at stake—his ability to carry on his occupation—the standard to be applied is very close to "beyond a reasonable doubt." It is one at the upper end of a balance of probabilities and the courts have created that continuum.

We think it is important for police officers, so that they understand the system and do not feel as if they are living in a different world from the one they participate in in their daily lives as police officers, that the standard remain that of "beyond a reasonable doubt."

The Chairman: That is not the standard that applies if it is a discipline hearing within the police department, is it?

Mr Roland: There is no standard set in the Police Act or regulations. Recently the courts have said that the Police Act is a labour relations statute and therefore they have applied the standard of the balance of probabilities that applies to labour relations legislation and labour relations practice generally, but have recognized that because it is dealing with one's professional life, it is at the upper end of that standard where the consequences may be the loss of employment.

The Chairman: Just for clarity, you are asking for the same standard as set out in the Law Society Act?

Mr Roland: Yes, for the introduction of evidence; for the rules of evidence, that evidence that may be admitted at the hearing.

Hon Mr Scott: As I understand it, you make a pretty compelling case, it seems to me, that you should have a section for the admission of evidence like subsection 12(6) of the Health Disciplines Act. Is that it?

Mr Roland: That is right.

Hon Mr Scott: You do that on the basis that you should be dealt with in the same way as other professionals?

Mr Roland: Yes.

Hon Mr Scott: I take it that you would make the same case for burden of proof?

Mr Roland: No.

Hon Mr Scott: You would not?

Mr Roland: No, we would not. We would not because the courts have recognized, and the minister knows this very well, that because in professional discipline matters it is not a criminal matter, the standard of proof has been—the courts have pronounced on this—what is known as the balance of probabilities. However, the courts have said and have really developed it in the context of professional discipline matters, that the standard should be at the upper end of that. It is very hard to know the distinction between the upper end of the balance of probabilities, on one the hand, and "beyond a reasonable doubt" on the other.

Hon Mr Scott: If you took the position that the civil burden that is imposed under the Health Disciplines Act or the Law Society Act was in fact discharged by the presentation of clear and convincing evidence of guilt, I take it the police association would accept that, even though it would involve a modification, technical perhaps, from the present criminal burden.

Mr Roland: Very technical; clear, cogent and convincing.

Hon Mr Scott: But would that be acceptable?

Mr Roland: It would be misunderstood by the officers and that is my concern. I think it is a technical difference and not a real difference. When the courts say "clear, convincing and cogent evidence," they are really talking about something that is very close, if not analogous to "beyond a reasonable doubt." But I think it would be misunderstood by police officers who understand that; that is what they live with.

1520

Hon Mr Scott: I am just saying that if the thrust, and it seems to me entirely sensible when it comes to the admission of evidence, is to apply the same standards to professionals, then I would have thought when it comes to burden of proof the same standard which, as you say, is very close to the criminal burden—that is, clear and convincing evidence—would be accepted,

even if initially misunderstood. You would persuade people that it was really no significant change.

Mr Roland: Yes. I think you have my point that it would be difficult for police officers who do not understand that burden because they live with one only and that is, "beyond a reasonable doubt." That is the one day to day, day in and day out. They see the citizens they deal with having to face that burden every day and themselves, as police officers, in participating in the prosecution of those citizens, having to live with that as well.

There is one other point on the burden. There is a distinction between police officers who are the subject matter of citizen complaints and other professionals, such as doctors, lawyers and so on. It is the distinction that police officers very often are the subject matter of complaints for ulterior motives. Many citizens often have complaints about officers because they think there may be some advantage in the criminal process, or about a complaint that is not real. That is a concern for police officers.

You do not get that kind of underlying motive from citizens who are patients of doctors or clients of lawyers to the extent that you do with citizens who, by virtue of their contact with police, are often suspects or the accused in criminal matters. That also militates towards a different standard of the proof of that complaint because very often there is that underlying genesis or motive to a complaint.

Hon Mr Scott: You are an old counsel for the College of Physicians and Surgeons of Ontario. You must have heard it said often there that complaints by patients are made about doctors in order to advance a civil cause of action for harm caused by treatment, but yet they still have the "clear and convincing" civil burden.

Mr Roland: It all comes from the perception of the patient that that patient has not been properly dealt with by the lawyer. That is not so with citizens and police. They may have no real complaint, but think there is some advantage in making the complaint.

Mr Lymer: There is another point to be made in so far as the burden of proof is concerned. When you were discussing the professions, whether the medical or legal profession, when they are tried and adjudicated they are adjudicated by their peers. That is not so under the citizen complaint. They are adjudicated by people who have no experience in police work.

If he wanted to have me judged by my peers and I would prefer that to be done, then I would not mind being judged on the balance of probabilities as to whether I were guilty or not. I think there is a clear distinction between the two.

Hon Mr Scott: As elected officials, you and I are judged that way every once in a while; you more often than I.

Mr Lymer: If you want complaints against police officers in Metropolitan Toronto dealt with in the same way as they are by the benchers' society, I would not mind that at all.

The Chairman: Before I open it up to questions from the floor, perhaps I can inquire, will there be any further presentation?

Mr Jessop: Yes. I hope I have enunciated it, but perhaps not: What we are looking to is one process for every police force in Ontario. That process would apply as much to the Metropolitan Toronto Police Force as it would to Atikokan or anywhere else. We feel it could be dealt with in that way on a much more efficient basis.

I might say to you that I am, and I see some of you are, in receipt of a letter from Chief David Edwards of the Durham Regional Police. Chief Edwards and I, the members of our committee and in fact the membership of the Metropolitan Toronto Police Association believe that such a system could work. It is unfortunate that Chief Edwards could not be here with us, but I am quite sure he would say the same thing to you.

The Chairman: You might give him our regrets as to the last paragraph. This was advertised widely and that must have been missed. He was not on our initial sheet; is that right? So he would not have been notified directly. Perhaps you will give him our regrets that he was not, but I think you have put forth his position.

Mr Jessop: It is very unusual for the Police Association of Ontario to pass on the regrets of the government to a chief of police, but we will attempt to do that.

Mr Kormos: Mr Jessop, both in your brief and here you have addressed the matter twice of the need from your point of view for a single system across the province, serving every community, every police officer. It is well articulated in the brief and well articulated by you. What is the cops' perception? What is the current perception of a person on a police force north of Toronto or west of Toronto and a person policing in Metro Toronto? If you can take that, when we are talking about a patchwork across the province, when we are talking about no systematic introduction of this procedure, can you perhaps give us a picture or a feeling as to how these officers are going to respond to that. I have a feeling they are not happy about it. It is not just a matter of your position by way of policy, but that individual police officers are not happy about it.

Mr Jessop: Our position on the introduction of the matter is not difficult to enunciate, if I may answer your question backwards. Since 1980, prior to this government, we have been looking for a new Police Act. Quite frankly, it is only since Mrs Smith took over as minister that we made it this far. I would expect that in 1980 or in 1981 particularly, when Bill 18 was first introduced, if we had had our act together, all of us collectively as the people of Ontario, we would have had a complaints process in a police act and it would have been universal for all those in Ontario.

I do not have to speak to the problems that the Metropolitan Toronto Police Force and its members have had with this particular act. Those have been well enunciated by my predecessors and I think it could be resolved with the suggestions we have included. To be quite frank with you, in the rest of the province, with a few limited exceptions, local police commissions have in my view done a fair to good job, or perhaps a good to excellent job, of dealing with public complaints.

In our discussions with the MTPA, I think they have recognized that if we are striving for an ideal, they can do the job and they will go the job, and the chiefs will do the job, but because of the way we are perceived as investigating ourselves, they can and will live with a fair agency that will

investigate those matters where the citizen simply says, It's is not good enough."

But there has to be a finality to this. What was it that justice of the Supreme Court said, "Endless debate without resolve"? We cannot have that. Sooner or later, we have to reach the point where we have a tribunal that hears these things, if it is deemed that it should hear it, and it is over.

Mr McGuinty: I have a question that follows up from what Mr Jessop has said, but first of all I would like to say to Mr Roland that I certainly sympathize with the statement he made regarding evidence. Those of us on this and other committees have sometimes been presented with briefs and statements and restatements of hearsay, and the assumption seems to be that 10 statements of hearsay equal fact, as this massive tome on race relations and policing illustrates very well.

1530

I will ask a frightfully naïve question which displays my ignorance. My understanding of police work is based upon some extensive experience as a delinquent—

Interjections.

Mr McGuinty: —and limited experience as a police officer, and it always seemed to me—and I confirm this by talking to contemporaries and good friends of mine like Tom Flanagan and others whom you are familiar with in the Ottawa area—that there is no one more interested, more concerned, about correcting or taking action against the activities of, say, bad cops than cops themselves.

This seems to me like kick-your-cop year. Every time you pick up the paper, somebody is making charges, some of these local sideline snipers who write for the local press, and others. We have a kind of a hypersensitivity now and a feeling that it is absolutely imperative that police not investigate themselves and that we have independent adjudication. It seems to me that is open to an interpretation as allegations against police honesty and professional integrity, and it seems to me that we might be getting into a can of worms here.

We are setting up a formidable machine. It is going to be costly. We are going to try to have it imposed uniformly. I would suspect it will eventually lead to that.

I am really surprised and a bit disappointed that the police association would state that it is absolutely imperative that we have this type of thing. Is it imperative because of your concern for the quality of the officers who are now on forces across the province, that this quality could deteriorate? Or is it a concern because of the external pressures that are exerted by various groups which would impute the kind of professional lack of integrity that I have no reason to suspect the police are guilty of?

Hon Mr Scott: Anyone dare to comment on that?

Mr Jessop: I can hardly wait.

As I said, we should not throw out the baby with the bathwater, to belabour an old statement. The process that has been ongoing with most of our

commissions has been satisfactory, in our view, both to the communities and to the people who have asked the questions. I guess I went over that.

After a great deal of discussion, we have come to the agreement that an individual who feels abused by the local police governing authority, the local police force, has to have somewhere to go outside of his municipality. So we should do both. We should give him that final opportunity, and I said that there has to be some finality to it.

I believe that Ontario police forces are the best in Canada and probably the best in North America because we are always in a process of self-examination. For as long as I can remember, we have never said, "This is good enough, so let's quit."

We cannot sit here and state for one moment that the pressures of the press and special interest groups and all those people have not had an effect on our thinking, but if you believe in our society, I guess you have to accept the fact that everything is not perfect and we are going to make an effort to make it better.

What we are saying is in some areas of this province people have not done a bad job in looking after the public, but in the event of unusual cases where they have done a bad job, let's give that individual the opportunity to go there. But when he goes there and the policeman goes there, let's afford the policeman all the protections that he should have to protect his employment, if in fact he is that good person that we want on a police force.

Mr McGuinty: So you see in effect that this is a kind of safeguard, acting in the best interests of the policemen themselves?

Mr Jessop: Yes.

Mr McGuinty: Thank you, sir.

Mr J. M. Johnson: I have a bit of a problem with your recommendation on page 7. In the legislation it authorizes municipalities to adopt bylaws requesting this procedure; it is permissive. The ministry goes on to say one third of the members of the panel shall be persons recommended by the council of the designated municipality. In your recommendation you make no reference to municipalities; you make reference to the Association of Municipalities of Ontario. Why do you deny the municipal councils any direct involvement?

Mr Jessop: What we are looking for here, sir, is only one tribunal. We are not looking for a tribunal in Windsor, one in London, one in Ottawa and wherever. We are looking for a panel here in which the law society has a group of names that can be drawn from. AMO and the Municipal Police Authorities have submitted a list of people who they believe have great credibility, and they could be drawn from. We would do the same thing.

In the event there was a complaint in Ottawa that had to be decided by the tribunal, then in fact the minister or the chairman would pick a panel of three from this group of names, one person from each group, and send them to Ottawa to hear the complaint. In effect, you would have independent input from the police, from the local political group, from the appointed members of the MPA. Along with that you would have the safeguard of, I would hope, a highly trained and respected legal mind who could adjudicate on the legal issues in the case.

The Chairman: Mr Curling and then Mr Mahoney. We have about six minutes left.

Mr Curling: First, I want to commend the association, from what I am hearing from it now, for accepting the fact that there should be one overall complaint bureau or set of procedures for Ontario. This itself has come a far way from what I used to hear. The police used to say they felt they could organize their own situation all across Ontario in little pockets. Today, here we have an Ontario system, which they have accepted. That is a far way to have come, and I want to commend that group for making those changes.

There is a matter of perception here. I continue to be shocked when a police officer pulls me over and he is polite and he conducts himself in a good professional manner. I do not know why I am surprised, but that is the type of behaviour one meets in the police force. I have come across many, I would say more so, to the extent of about 90 per cent of those have stopped me—I do not know if I have been stopped very many times—who I think are quite professional and conduct themselves very well. But I do not want to be surprised about this; I want it to be a standard. I would like to see in my country, my province, the police officers behaving in a standard, professional, mannerly way.

Even if you ignore the fact that there no problems out there, there are citizens out there who are frightened of the police, police who have abused the system itself. When counsel spoke about the evidence and the manner in which it is to be received, I would like to see the association requesting, encouraging, any type of behaviour that is not professional to come forward. If we put it in a very rigid manner, I think it might discourage—in other words, a very professional manner of presenting evidence of misbehaviour of professionalism by the police. People do not come forward with it at all. There are many police officers out there who do not conduct themselves in a very professional manner and use the power therefore.

1540

I notice that on page 7 you emphasize very much that it is an inquiry hearing citizens' complaints; that is what it is all about. I also gather that this body will hear all citizens' complaints. In the ABC aspect of selecting people for the panel, I do not get a feeling that there are citizens representing there. I think it is a closed group.

I would like to see that if there is a complaint being heard, respectable citizens in the community are sitting on that panel there, because they are bringing to that board of the complaints bureau the feeling of understanding of the citizens, and not being very disciplined, with all respect to lawyers and people in that profession. They can look at it from the pressure the citizens feel there. I think a better police force can then be seen as representing the people of that constituency or that area.

Mr Jessop: I will just reply to that quickly, if I may, Mr Chairman. Mr Curling, when we get to this particular panel, in all likelihood we may be talking about a policeman's livelihood. We expect that the government appoints from the electorate responsible members of the electorate to the MPA. In addition to that, we are suggesting that in most cases members of the Association of Municipalities of Ontario would be elected officials.

I can think of many instances now throughout the province where a respected individual, a citizen, is appointed to a board of governors or a

board of police commissioners as we call it now. We are suggesting to you that those people, along with legal counsel, one qualified legal expert, are going to give justice to the system.

I would hesitate to agree with you that a member of a particular—I hope you did not suggest this, that in a certain instance, a member of a community where the particular instance has had a serious effect perhaps be chosen to sit on that particular board. I think there might be a question as to impartiality. The way we arrived at this consensus was that it would contain elected officials and members of the community appointed to police boards by the government. That is about the best I can do.

I can say this to you: Those interested members of the community, who I hope are appointed to boards, would be dealing with public complaints, under our system, under all those complaints that were resolved by the local board, because that would be their function, as it is now.

Mr Connolly: Mr Chairman, one final comment if I could follow up on that: With respect, Mr Curling, I find a misperception or misconception on your part. I am quite tired of listening to how associations, and particularly people in my position, have opposed independent review of police actions. I have been involved in this business for over 25 years. I have publicly stated, back when Mr Linden's, Mr Maloney's report came out, that we never objected to independent review. The press, for whatever reasons, will not listen to us.

Any time over the past 20 years that anybody had wanted my view, they would have got it publicly if they cared to listen. We did not oppose it. I have been with this organization for going on 10 years. We have never, ever opposed independent review of police actions. Never. Somehow or other, the press leave you people with that perception. Please, I would implore the members of this committee, we do not oppose it; we have not opposed it. If you have read it in the press, it has been wrong.

Mr Mahoney: We can understand that.

The Chairman: We are sending a copy of Hansard to the press and they will print it.

Thank you very much, gentlemen. Your time period has come to an end, but we appreciate your taking time out of your busy schedule to come here and to fill us in on this information and allow us to ask you questions.

Mr Jessop: Thank you again for hearing us.

The Chairman: The next deputation is from the Toronto Mayor's Committee on Community and Race Relations: Lloyd Perry, a face well known around Queen's Park for a long time—how are you, Mr Perry?—chair of the police subcommittee; Sri Guggan Sri-Skanda-Rajah, member, police subcommittee, and Peter Maloney, member, police subcommittee.

Gentlemen, you have 30 minutes. We have a copy of your brief. If you wish to use the full 30 minutes to address us, it is your time; but if there is some time left over, I am sure we will have questions from the members of the committee. If you would like to proceed, as I said before, perhaps you would identify yourselves for Hansard so we will have you on record.

TORONTO MAYOR'S COMMITTEE ON COMMUNITY AND RACE RELATIONS

Mr Perry: My name is Lloyd Perry, and I feel quite comfortable appearing before this particular august committee because it was my pleasure to do so for some 25 years.

This is a brief to this committee presented by the Toronto Mayor's Committee on Community and Race Relations. I have the honour and pleasure to have with me Sri Guggan Sri-Skanda-Rajah and Peter Maloney. Both of my associates have had a long history with respect to police and community relations and have made a substantial contribution to the development of this report. I am going to ask them, with your indulgence, to share this presentation with me.

We thank the members of the standing committee on administration of justice for the opportunity to present this brief with respect to Bill 4. Our task in this brief is threefold: to relate the role and responsibilities of our committee, to share some of our views on what we believe are areas of mutual concern and to make recommendations based on our experience which might assist you in your deliberations.

The Toronto Mayor's Committee on Community and Race Relations was established in 1981 by the council of the city of Toronto to promote understanding and respect among racial, cultural, ethnic and religious groups in Toronto. In this context, its role is to seek solutions to social problems and to help create an environment in which people will have an equal opportunity to grow to their maximum potential as contributing members of society.

Our committee also has a major responsibility to help combat racism and other factors that contribute to intergroup tensions. Towards this end, the committee monitors the effectiveness of the delivery of municipal services to minority groups and advises city council and city departments on a wide range of related issues from human rights and policing to cultural affairs and employment equity.

The bulk of our accomplishments have been in the areas of employment equity, accessibility to services, education and policing, both hiring practices and the ways in which our police force interacts with the city's various ethnic communities. The committee has been active from its beginning in community-police relations. Early on, a subcommittee on policing and community issues was established to address concerns about relations between the police and minorities.

Our committee was an early advocate for a civilian complaints process to investigate and deal with civilian complaints of misconduct by police officers. In our experience, the presence and operation of the public complaints commissioner is an essential mechanism for monitoring relations between the community and the police. If such a mechanism is absent, then there is no adequate system of redress.

1550

We know that the recommendations of the Report of the Race Relations and Policing Task Force will be put to you on several occasions, but in view of the fact that we endorse these recommendations, may I take the liberty to simply refer to page 184: "A recurring theme in the presentations before us

has been the demand for mandatory, province-wide independent civilian review of allegations of police misconduct against members of the public."

Further on the same page: "It is patently obvious that a publicly credible, accountable and independent civilian mechanism for public complaints is basic to responding to allegations of racial intolerance or other misconduct by all police."

I simply indicate to this committee that we heartily endorse the recommendations and the observations of the task force. I am going to ask my friend Sri to make some submissions with respect to some other aspects of our concerns. He has had a long record in the field of developing better community and police relations. We are delighted to be associated with him.

Mr Sri-Skanda-Rajah: We believe the Metropolitan Toronto Police Force civilian complaints process is a model program. It acts as a deterrent to officers who might otherwise be tempted to cross the line into unprofessional conduct. It brings respect to Toronto as a place of common civility and equity, particularly for minority groups and communities that have become disturbed by real or perceived police mistreatment.

Bill 4: We, therefore, are pleased that the province proposed to extend the civilian complaints process. However, we are of the firm opinion that this process should be mandatory across the province. We believe everyone in Ontario should have equal access to redress and justice when it comes to complaints of police misconduct, and that access should not have to depend on whether a municipality has chosen to opt into a complaints process. Further, it should not differentiate between members of the Ontario Provincial Police and members of municipal or regional police forces.

Access to justice should not be optional. The proposal in Bill 4 would discriminate against civilians in communities which do not opt into the complaints process. We are aware of at least one instance in which, during the hearing of a complaint against an officer under the Metropolitan Toronto Police Force Complaints Act, the officer resigned from the force and was immediately hired by another police force in Ontario. His resignation avoided any disciplinary action that the panel could have imposed. The board of inquiry hearing the matter had no statutory authority to impose any penalty or have its finding placed in the personal record of the officer, since he was no longer a member of the Metropolitan Toronto Police Force.

The structure proposed in Bill 4 appears to allow exactly the same result. Bill 4 provides for the creation of compartmentalized, local and virtually autonomous complaints commissions whose jurisdictions do not appear to extend beyond those particular municipalities: Such a structure would encourage offending officers to migrate to those municipalities which have the hardest time recruiting police officers. In many instances, these would be municipalities which would not have opted into the complaints process.

For all of these reasons, we are of the opinion that Bill 4 is fundamentally flawed.

Mr Perry: I will ask my associate Peter Maloney, who is no stranger to most of you on the committee, because he has had a long-standing reputation as an advocate for better community and police relations. He is a member of the Mayor's Committee on Community and Race Relations and has made a substantive contribution to development of this submission.

Mr Maloney: The Mayor's Committee on Community and Race Relations has, since its initial involvement in this issue, which is almost since the inception of the committee, strongly supported the concept of civilian review. However, it has supported, since the inception, not having the police involved in the initial investigation but rather having the commissioner involved from the inception in conducting the investigation with the possibility of seconding police officers for the purposes of continuing the investigation.

However, we note that Bill 4 does not address that concern of ours, which continues to be a concern of ours, and we, in the alternative, offer to you the prospect that if police are to carry out the initial investigation, the chief of police should be required to give a decision within six months of the complaint being made, and the commissioner should have the authority to grant appropriate extensions.

We say that to you, because one of the techniques that has been used for in effect delaying and subduing complainants has been the constant delay in the process of handling complaints, so that by the time a year and a half or two years go by, with a complaint still outstanding, the police reporting, as they are required under the legislation, month to month, you end up with a complainant who no longer wants to involve himself in the process or is prepared to accept some lesser redress than he originally would have intended.

Second, we say to you that if the complainant does not wish to have the police conduct the initial investigation, the complainant should have the right to decline to participate in that initial investigation, thus leaving the police with virtually nothing to investigate, thus moving it on to the stage where the police make their finding and the commissioner can then intervene and take over the matter.

We are of the view that the burden of proof required to make a finding of misconduct should be no higher than that required in any other professional disciplinary hearing. It should not be the criminal standard of proof beyond a reasonable doubt. It should rather be the civil standard that is set out in other disciplinary hearings.

At one time we were concerned that there would be an attempt to amend the act to change the basis for the admissibility of evidence to that preferred by the police associations, which is evidence as admissible at a criminal trial. We note that the bill does not present that as an alternative. In any event, we would like to state our view that the evidence admissible at board of inquiry hearings should be that set out in the Statutory Powers Procedure Act. It should not be changed so that only evidence which would be admissible at a criminal trial would be admissible.

We would ask you to amend the act so that the commissioner would be able to initiate a complaint of his own motion rather than awaiting the presentation of complaints by members of the community, and we would ask that informal resolutions and withdrawals be subject to review by the commissioner.

We would ask, as a result of the example cited by my friend Mr Sri-Skanda-Rajah, that officers who resign should continue to be subject to the jurisdiction of boards of inquiry, and that if they later go on to become police officers in another force, their personal record should reflect the fact that there had been a finding of misconduct and a penalty imposed.

At one point earlier in the process of reviewing this act, there was a proposal that came out of the police associations and out of the police

commissions that the board of inquiry should no longer have the penalty power. We note that the act does not adopt that recommendation and we thank you for that. We believe that neither the chief nor any other police officer should have the penalty power and that the board of inquiry, which has heard all of the evidence, should continue to have the penalty power.

We believe that there may be a problem in terms of clear language disclosure to the complainant. We believe that the act or its regulations should be amended or regulations should be put in place to ensure that the complainant understands what it is he or she is getting into at each step of the way by way of clear language disclosure.

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Finally, in my part of the submission, I would suggest that just as the chief of police in the conduct of the investigation, if the investigation is to remain in the hands of the police, can have a criminal charge laid with respect to misconduct by a police officer, there should be a matching power in the public complaints commissioner so that the public complaints commissioner, if his investigation gives rise to reasonable and probable grounds that an officer has committed a criminal offence and that there is sufficient evidence that might lead to the conviction of that officer for that criminal offence, ought to have the power co-equal with that of the chief of police to cause the laying of a criminal charge against the officer.

Mr Sri-Skanda-Rajah: There are a couple of other points I wish to draw to your attention.

Complaints should be required to be made within six months of the conduct complained of. The commissioner should be able to allow reasonable extensions.

The Toronto Mayor's Committee on Community and Race Relations agrees that there may be some cases in which, after a period of rehabilitation, an officer might be eligible to be rehired, and that such rehiring should be subject to the review of a board of inquiry, the board being appointed by the public complaints commissioner.

The conduct of officers in their private lives should not be the subject of the complaint process.

The Chairman: I did not see that position in there, about a police officer being allowed to be reinstated after a period of rehabilitation. Is that the request of all three deputants?

Mr Maloney: It is the position of the Toronto mayor's committee as adopted earlier in this process, which we neglected to put in the brief. We reviewed this and came to the conclusion that, as the mayor's committee had voted in its entirety in favour of that proposition and as we had presented it to the commission, when it was the Police Commission of Metropolitan Toronto, when it was reviewing the matter, we ought to bring it to the attention of this committee.

One of the reasons is that in addition to the situation that has arisen in Montreal just recently with the officer who shot the black youth and, it is now suggested, may be rehired, there appears currently to be a situation which may involve an officer disciplined through the public complaints commission here in Toronto, who was forced to resign. There may be a situation in which

the association is seeking to have him rehired, and we do not believe it ought to be in the hands of the police commission alone, in negotiation with the association to make that decision, but rather that the body that forced his resignation ought to have conduct of his readmission if that readmission occurs.

Just as in the law society there is a formal process, for example, for the re-entry of disbarred lawyers, similarly we think there ought to be a formal statutory provision for an examination of the fitness of an officer who seeks to be rehired after being forced to resign.

The Chairman: Are there any further comments from the deputants?

Mr Perry: These are our submissions. It will be obvious that we endorse the philosophy espoused in the legislation, but with a firm opinion that there is need for reconsideration of the aspects and concerns we have expressed.

The Chairman: Are there any questions from members of the committee?

Mr Mahoney: I thought I would get on before Mr Curling, so I would have a chance to get my question in.

I am just a little curious about the suggestion that this should be mandatory across the province and the difficulties that might create with a number of the commissions, municipal councils and regional councils that would under a mandatory bill be simply required to increase their tax levy in some way; unless, of course, the province picked up the entire tab, which I do not think is in the cards. I wonder if you might do more damage than good to the concept by more or less shoving it down their throats as opposed to allowing them an opportunity to investigate the opting-in principle, to investigate perhaps the success here in Metro and to make a decision in a democratic way; recognizing that the councils are all elected duly every three years and the commissioners are appointed either by the council or by the Attorney General's office.

I wonder if you would respond to the possibility that you would create a lot of bitterness and ill-feeling, particularly in areas that are referred to in many cases as very small municipalities where they would not see this type of thing as being necessary.

Mr Maloney: My first response—and maybe the other gentlemen would like to respond as well—is that we did not say it had to be a municipal process. It seems to us that the administration of justice is a provincial matter, that the provision of redress for misconduct by public authorities is a provincial matter, and that the way of getting around these small villages with their police committees and so on is to create a province-wide process with a single public complaints commission and commissioner, as you do in this legislation; but with the possibility, perhaps, of structuring it so that local sittings of that commission with respect to misconduct have at least one or two local members who are appointed or suggested for appointment by the local council.

It would be my suggestion that that be a province-wide thing, funded in the majority by the province. If you believe in this concept, how can you leave some citizens of Ontario out in the cold, so that they can be the subject of misconduct by police officers without redress, whereas other

citizens bask in the light of justice? I just do not understand that. Why would you segment it?

Mr Mahoney: So you are suggesting an Ontario Municipal Board concept in a sense?

Mr Maloney: I think that is an appeal board, and I would rather see you involved in a commission like the one we have in Toronto but province-wide.

Mr Perry: Let me say the same thing my associate has said in slightly different language.

Obviously, we join the large number of representations made to the task force that the process should be mandatory, but that does not say it has to be inflexible. I submit that there would be room to give consideration to local situations that warrant flexibility.

Mr Sri-Skanda-Rajah: I had the advantage of listening to the preceding delegation. If I was not mistaken, I was pretty pleased to hear that the uniformity approach is also one of the suggestions that came forward from the police associations. Therefore, this is not a position of the community only. In the interest of justice it is important, if necessary, that the province take over the responsibility to do this and it be available on a uniform basis.

Mr Mahoney: Do you have any comment on the position that was put forward by the previous delegation that this should come under the Solicitor General rather than the Attorney General?

Mr Maloney: Again, without the committee having considered the matter, my personal view of it, having been involved for a long time, is that those are two separate branches of government. The Solicitor General is the advocate in cabinet on behalf of the police, as far as I am concerned. The Attorney General is supposed to be the advocate of the administration of justice within cabinet. It is more appropriate, it seems to me, that this is an administration of justice matter rather than a policing matter.

Mr Sri-Skanda-Rajah: My position would be the same, again without consulting the committee. It is an individual position and I support that.

The Chairman: Mr McGuinty, for about four minutes.

Mr Mahoney: Gee, I could have gone longer.

Mr McGuinty: Mercifully, I will take over.

It always seems to me—and I say this with due respect—a bit presumptuous when people in Toronto speak of Toronto as the norm which sets the pattern that should be followed elsewhere in the province. As I said before, there is life after Ajax, and some of that life is good.

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My understanding of our situation, for example, in Ottawa, is that we have a complaints procedure operative through the police commission. The policemen are content with it, the commission is content with it, and to the best of my knowledge, the people are content with it.

Living in Toronto four days a week for the past two years, I think it is utter presumption for the people of Toronto to set their force as the norm and standard which others must seek to emulate.

I really find it difficult to understand why you seem to think this should be applied uniformly in every way, because communities differ. It is kind of a local option, like Sunday shopping. What is appropriate for Toronto is not appropriate for Pembroke or Osceola, where you have a part-time policeman.

Mr Maloney: If I can be presumptuous and the first to respond, it seems to me that Torontonians are always hopeful that other people can abide under a situation, that they have the same benefits as people in Toronto.

Mr McGuinty: That is presumptuous, yes.

Mr Maloney: We enjoy this city and we think we are very progressive in terms of providing redress to the citizens of Toronto with respect to police misconduct.

Second, we note that police misconduct appears not to be contained wholly within the boundaries of Metropolitan Toronto. We have noted examples in Ontario within the last five years where there have been allegations of horrific abuse in cities of various sizes.

Third, we have never held out our police force as the norm. Rather, in submissions I have made, London and Ottawa have figured as two of the best-run police forces in this province, ones with which the citizens are satisfied and which economize the expenditure of tax dollars.

But we also note that while the office of the public complaints commissioner here does not do much actual work—that is, it does not engage in a high-volume put-through of cases—it is, like the criminal law, more of a deterrent; the very existence of the courts. Police officers are very practical people and when their conduct is one that may go one way or another, the existence of the public complaints office seems to weigh in that balance against conduct which might be viewed as misconduct on the part of police officers.

I have been in the practice of criminal law since this office started out in Toronto, and I cannot tell you how significant a shift in attitude and conduct has occurred simply because of the existence of that form of redress. We are hopeful that, as the province has decided it might like to extend this experiment, it would provide equal benefits to all Ontarians with respect to that.

Mr Sri-Skanda-Rajah: I am sorry you understood this as a presumption. An analysis of how the public complaints office came into being—and having had many jurisdictions in different places, within Canada, in various provinces, in the United States and in Great Britain, I endorse Mr Maloney's statement that what we had here was an experimental act, the purpose of which was to see whether a system like this is workable. I would be the first to tell you it is not perfect; therefore, there is no presumption. But it is something that is practical, that appears to restore confidence in the process within the public at large.

From what I heard from the delegation earlier on, it reiterates it has not been forced to this type of review. Again, I draw strength from the

position of the police association itself, with a view to looking at uniformity, availability and equal access of justice as the best thing that could happen to this province. That is my position.

The Chairman: Do you wish to comment as well, Mr Perry?

Mr Perry: Looking at the clock, the most I can say to you is thank you very much for this opportunity to share in these most important and long-ranging deliberations which will affect the administration of justice in this province for many years to come. We are pleased to be party to these considerations.

Mr Scott: I would like to cut into Mr Borovoy's time—this is something I have never been able to do and I just thought it would be fun to try—by asking one question.

The only part of your brief that rather took me aback was the proposal where you say that conduct of officers in their private lives should not be the subject of the complaints process. I think we all agree that purely private conduct should not be subject to a complaint, but surely you would make an exception to that, to use the words of the code of offences itself, that conduct, though committed when off duty and perhaps even at home, which was likely to bring discredit upon the reputation of police administration or the administration of justice would not be private conduct for the purposes of your recommendation.

Mr Maloney: I cannot agree with you. There has to be a private sphere in a police officer's life; I guess where we are differing is where that private sphere begins and ends. It seems to me that just because someone is a lawyer or a doctor or whatever and engages in conduct within that private sphere, he ought not to be disciplinable by his disciplinary body. I know that disciplinary bodies do discipline people for conduct in that arena in the circumstances you describe. I am not sure that is altogether a healthy thing.

Hon Mr Scott: You would be prepared to see that the complaints process had nothing to do with a police officer in some municipality who, in his private life, took a public position on racial matters?

Mr Maloney: I would think that it would be inappropriate if it were in his private life and not in his capacity as a police officer. It is police misconduct that the act is addressed to.

Hon Mr Scott: Very well. Thank you. That is certainly clear.

The Chairman: Thank you very much, gentlemen. We appreciate your taking the time out to come before us.

The next deputation is Alan Borovoy, general counsel to the Canadian Civil Liberties Association.

CANADIAN CIVIL LIBERTIES ASSOCIATION

Mr Borovoy: I am representing the Canadian Civil Liberties Association. First, I would like to do something, though not completely unique, nevertheless rare, and that is to envelop myself in the flag of the police association, at least for some limited purposes. I am happy to join the police association in its recommendation that the system of independent investigation and review of civilian complaints be extended on a nonoptional basis throughout the province.

I can tell you that in this respect, the Canadian Civil Liberties Association has done little smatterings of research from time to time. Some of these cases I will describe to you were presented to the Attorney General back in January when we had a meeting with him on this subject.

We went through a number of newspapers across the province in the past few years and examined complaints regarding police misconduct. We just selected out cases that had peculiar characteristics. In one case, for example, the matter was initiated by someone independent of the alleged victim of the impropriety. The whole thing was through independent witnesses. In another one there was a conflict of evidence among the police themselves. Another one went to trial and a judge actually found the police guilty of misconduct for purposes—he considered their behaviour a violation of the charter and made such a finding in a court case.

Notwithstanding all of this, the police in every one of these cases investigated and found no wrongdoing.

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In all fairness, not having done the investigations myself, not having read the investigative reports, I am not in a position to say who is right. What I can say to you is that anybody reading those newspaper accounts has to come away with a very disquieting feeling about what is going on. That, of course, is the whole point of this exercise. There are limits to what legislators can do. The very least we can do is create a system that reduces as much as it is possible to do any conflicts of interest in whatever system we create.

We know that a system handled by the police themselves, no matter how fair in fact, cannot appear fair because we know that police officers have interests. They may have interests of the department to protect, the good name of the department. They may have their good collegial relations to sustain. However you slice it, they have those interests, and members of the public simply cannot trust that they are going to get a fair shake when the matter is handled exclusively by the police.

It is on that basis we say that the mere happenstance of where an incident occurs should not be sufficient to determine people's fundamental freedoms and basic safeguards in Ontario. The system should be extended on a nonoptional basis throughout the province. Point one.

The second point deals with the question of trying to amend the existing legislation to make it more fair than we believe it is. At the moment, the system is basically characterized by internal investigation and external review. We believe the initial investigations should also be external to the police department.

Again, it is the same problem. When you ask police officers to do it, from the standpoint of the complainants or members of the public, that investigation is going to be vulnerable to the suspicion of coverup. From the standpoint of many police officers, it is going to be vulnerable to the suspicion that considerations of intradepartmental politics might have prevailed over the interests of scrupulous fact-finding. So the system is tainted by the fact that those investigations are not conducted externally.

For these purposes, I think it is helpful to look at some of the actual experience. We had a case in Metropolitan Toronto a couple of years ago when a

police officer testified at the criminal trial of another police officer who was accused of committing a rather serious assault on a prisoner. As a result, the accused police officer went to jail. According to the press, the police officer who testified against him subsequently was cold-shouldered out of the department. He was cold-shouldered by his fellow officers and, as a result of the pressure, he resigned. I am not reporting this on the basis of CCLA fact-finding. I am telling you what the press has alleged happened.

We had a situation in Scarborough where there was a big melee at some party. Numbers of police officers came in, films were taken, which indicated that some of those police officers committed acts of misconduct during the course of enforcing whatever they had to enforce that night to keep or restore the peace. Not a single officer who was at the scene was subsequently able or prepared or willing or whatever to identify any of the officers on the film; unable to do it.

When we see that, I suggest to you that that has to create, in the minds of the public and potential complainants, some reasonable suspicion that if they file a complaint and that complaint is going to be investigated exclusively by fellow police officers of the officer against whom the person has the complaint, they are not going to get a fair investigation.

I submit to you that this is the very least that can be drawn from those facts from the actual experience. That being the case, we submit to you that the initial investigations, as well as the subsequent review, should be handled by the office external to the police department. Indeed, in our view, there is even an argument for involving the operation in the criminal process as well.

I note that recently, in the past number of years, when there have been serious allegations against police officers, there has been a tendency to call in another police department to do the criminal investigation. In our view, that certainly is an improvement over the system where those criminal investigations were handled entirely within the police department that gave rise to the incident. The difficulty, however, is that even other police departments are going to be vulnerable to that same problem.

It is interesting that last winter, when the incidents between the police and the black community arose and there was an Ontario Provincial Police investigation, in the final result—I cannot recall exactly what the charge was, but numbers of members of the black community expressed unhappiness that the charge was not more serious and numbers of the representatives of the police community complained that the ultimate charge was too serious. Nobody was satisfied. Maybe that is endemic to the human condition.

The problem, however, is that when other police departments get involved, you still have some of those same suspicions and difficulties. I cite to you in this respect the testimony of Royal Canadian Mounted Police Sergeant Harry Wheaton, I think, who appeared before the Donald Marshall inquiry in Nova Scotia. As an RCMP officer, he had the duty to investigate the Sydney, Nova Scotia police force on some matter that arose down there. Apparently, in the course of the investigation, he pulled his punches, was not as vigorous as he might otherwise have been, and he was asked about this when he testified. His answer was: "You know police officers are like a fraternity. We owe duty to one another." His language. All I suggest to you is that when that happens, we should not rely as completely as we have on these traditional arrangements.

We believe also that the independent complaints system should have audit powers. It should act not only on the basis of complaints that are filed, but should have some capacity to initiate audits of what the police are doing so that it might find complaints, might find situations that ought to be corrected that are currently simply not emerging in the public arena.

One such matter, for example, relates to the enormous investigative and prosecutorial discretion: Who decides and what determines what matters the police investigate, how they are going to investigate it, who they are going to investigate, who gets charged and with what they get charged?

There is a whole area that is almost invisible to public scrutiny, and we believe there ought to be a way of systematically looking at these matters, much as the Security Intelligence Review Committee at the federal level does with the Canadian Security Intelligence Service, CSIS, with substantial access to materials to be able to go in and find out so that it can bring to public light and scrutiny some of the practices that are going on that ought to be a matter of public scrutiny.

There are unfairnesses in the existing legislation. Time does not permit me to go through all of them, but since I notice the Attorney General encroached somewhat on my time, I can encroach somewhat on the time of the nondelegation appearing after me.

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Hon Mr Scott: It was just a minute.

Mr Borovoy: You know and I know that it is not possible for your interventions to last just a minute.

At any rate, just to take in three matters, and this cannot be exhaustive, I want to mention some of the highlights. One issue is the question of nominating people to serve on the complaints boards. We believe it is unfair that the police interest should be able to nominate a third of those people serving. There is no comparable provision for the aggrieved interests. The police are usually the implicated interests; there is nothing comparable for the aggrieved interests. Our view is that either there should be some way of equalizing it or removing the advantage the police enjoy. This is not to say there cannot be wide consultation, and there ought to be, but it is to say it ought not to be formalized in this fashion.

Second, there is the question of when police officers are required to make statements in response to questions put to them by their superiors. In our view, it is not reasonable that their answers be subject to exclusion from subsequent disciplinary hearings at the instance of the officer. This is remarkable solicitude to give to police officers. It is given to no one else I am aware of, certainly not in labour arbitrations.

If an auto worker or steelworker is required, on pain of losing his job, to answer questions relating to his job-related misconduct, his replies are not rendered excludable at labour arbitrations. There is no reason police officers should enjoy that special privilege. I can see an argument for rendering their answers excludable at criminal trials if they are subsequently charged with criminal offences, because of their peculiar vulnerability to accusations of a criminal nature, but I see no argument for excluding them at disciplinary hearings.

Finally, you have already heard remarks made about the standard of reasonable doubt. Again, there is no reason police officers should be treated with this kind of unique solicitude among all others who stand to lose their jobs. When it is a criminal charge, of course police officers should have the same protections as anyone else when they might lose their liberty. When they might lose their jobs, they ought to attract comparable protections, not unique ones.

If we are concerned about protecting and being fairer to police, I would suggest that where we ought to look is at the internal arrangements they have, that in their discipline and discharge grievances, they do not currently have access to independent adjudication. They go to their own police commission, which is their management, or to the Ontario Police Commission. With respect, that is comparable to giving an auto worker at General Motors redress to the local chamber of commerce. In our view, that is not fair. Police officers should have in their internal arrangements much fairer protections than we now give them.

What I think has happened is that in the attempt to be fair, we have conferred upon them in this act some safeguards nobody has and then have denied them safeguards that everybody else has. I think it is neither reasonable nor fair. All of which, Mr Chairman, is, as always, respectfully submitted.

The Chairman: Thank you again, as usual. Mr Kanter.

Mr Kanter: It always a challenge to follow Mr Borovoy. However, I do have a question, at least with respect to one of his three areas, and that is your contention that investigations should be conducted entirely by external sources, not by police sources.

We heard earlier today the Police Association of Ontario say it now supports civilian review of police behaviour. In my view, that was a fairly dramatic change from at least my perception of the police association point of view. There was some discussion whether it had been accurately reported by the press. Presumably this position is based on something like the Metropolitan Toronto model, which is a hybrid model. It is police investigation with civilian monitoring or oversight and I think the commissioner can in fact initiate a complaint against the police, if he likes.

Do you not feel there is something to be gained by police co-operation with investigation of their behaviour, and could you point to any other jurisdictions where a totally independent review is in operation?

If I can just get in one third question along the same line, would you feel it would make some sense to perhaps differentiate between different charges, charges of behaviour of different sorts of severity? As an MPP, I receive complaints sometimes from people who are concerned about police officers being rude when they get a traffic ticket. Of course, there are cases of assault or bodily harm or something like that. Might it make some sense to have a system where there would be more external involvement or perhaps review for more serious charges of police misconduct, but perhaps leave the less serious charges more to the police to investigate themselves?

Mr Borovoy: Yes. Part of the problem we are going to have is who determines which are the serious ones. The answer is that certainly what you

are suggesting would be preferable to the existing system, where it is all internal.

Mr Kanter: With civilian oversight, though, under the Metro system.

Mr Borovoy: Yes; I am sorry. I did not mean to be unfair about that. Where the investigations are primarily internal, I think that is a fairer way of characterizing it. So to the extent that you introduce more and more external investigation, that is preferable to internal investigation, but in my view it is not good enough. Yes, of course, I would like the police to co-operate. I think it would be helpful to give that leadership and try to persuade them to co-operate.

There are other jurisdictions. You caught us in the middle of the summer when I am particularly short-handed so I have to rely on memory, but I believe that in Manitoba the investigations are done externally. I think there are other problems with the Manitoba model, but I think the investigations are done that way. I think there are some in the United States as well, but I would have to look into that, in all fairness.

The Chairman: The Attorney General wants to say something.

Hon Mr Scott: I may be wrong about this, but my understanding of the Manitoba model is that police officers from other jurisdictions are used, but professional police officers do the investigation.

What I want to focus on is this point, because Mr Linden's point, when he participated in the establishment of this, was that the ideal of course in an ideal world would be a system in which you had a police force of such independence, integrity and efficiency that there would be no risk as a result of internal investigation. We all understand the human element, however, and that is what brings you to make this point. Mr Linden's point was that if you leave the local police out of it, you create a capacity and perhaps a willingness in a local police force to stonewall the external investigation.

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He would say in support of that that this is why, leaving Manitoba aside for the moment, there are lots of jurisdictions in North America, like Toronto, that have police investigation monitored by civilians, but there is no jurisdiction in North America that has independent outside investigation. Indeed, the argument is made, as I understand it, that the reason civilian complaints processes failed in New York and in Philadelphia was precisely because they insisted that the investigation be done outside the police force, which led to stonewalling of the external investigation.

That is why Mr Linden would say the Toronto model is the right one because it forces the police to establish a department, to get professional about it, and offsets any inclination not to do so by the introduction of a monitoring system.

Mr Borovoy: I enthusiastically await the day when you will cite me as an authority as enthusiastically as you cite Sidney Linden.

Hon Mr Scott: I have cited you often as an authority.

Mr Borovoy: Yes, I know; it is just that I have not got to hear it and I am jealous.

Hon Mr Scott: No, and it will not. It does not happen that often that I could—

Mr. Borovoy: That is what I feared.

I think the problem you have about this kind of system you are talking about is that, first of all, if you look at the American arrangements, I think the situation in the United States is such that these kinds of inferences are not really the appropriate ones to draw.

You are in a situation of severely polarized communities where so much of that is blacks versus the cops in so many of those cities that to draw the inference from that that it is external investigation that led to the problem—almost any attempt to introduce some kind of independent arrangement just created a terrific backlash from the police officers themselves and you had situations where politicians were not prepared to stand up to it and they got engulfed in it.

I do not think we have any analogous situation in Canada, regardless of the differences there are. But when you talk about stonewalling, under our existing system, we look at Scarborough and say there we have a situation that has all the appearance of stonewalling and there we preserved police investigation and the matter was still stonewalled. When there is stonewalling to be done, stonewalling may be done regardless of what system you have.

One of my concerns is how many people never get even to file complaints because they do not trust an arrangement where they have to confide their problems to a police officer who has such interests to protect. You look at that behaviour in Scarborough and say, what is the best inference to draw from that, that people will trust the police to investigate or that they would more likely only trust an outsider?

The Chairman: I just want to indicate something from my extensive years of practice. Very often what you had to do was go down and file a civil claim against John Doe and not tell anybody you had filed it until after the trial, because if you came to attention before or during the trial, you might find yourself in difficulty on the trial in terms of getting answers. I think it is a rather sad situation that you have to go to those extremes to accomplish that end.

In any event, Mr Borovoy, it is always a pleasure to hear from you. This is probably about the fifth or sixth time you have appeared before us on various matters. We appreciate it. Thank you very much.

Hon Mr Scott: It is unending. It goes on for ever.

Mr Borovoy: I do not know if that is a commentary on the quality of presentation or simply on age.

Hon Mr Scott: I would take it and get out.

The Chairman: The Attorney General has a meeting he has to go to, so we will see him later. Before we adjourn, as you probably know from looking at the schedule, we have Tuesday, Wednesday and Thursday as sitting days. Your list says 10 am and 2 pm on Wednesday and Thursday. It is my understanding

that on Wednesday, although we have a two o'clock deputation, we do not have one at 10 am, not at the moment anyway, nor does the clerk anticipate one. On Thursday, we have one at 10 am, but not at 2 pm. What I want to ask you is, do you wish to at least allow the members to organize their lives by formally saying now that we will not sit at those times or do you want to leave them open?

Mr Mahoney: Is it possible to switch from 10 am on Thursday to 10 am on Wednesday and sit Wednesday and not Thursday?

The Chairman: I think that has been tried, has it not?

Clerk of the Committee: That group approached the committee only today to appear on Thursday morning, specifically requesting Thursday morning.

Mr Mahoney: Can you ask them if they can appear Wednesday?

Clerk of the Committee: They will be receiving the bill tomorrow.

Mr Mahoney: Did you ask if they could appear Wednesday?

Clerk of the Committee: Yes, I did.

The Chairman: Okay. Do we have unanimous agreement then that the sittings would be Tuesday at 10 am and 2 pm, Wednesday at 2 pm and Thursday at 10 am? That would be it. Do we agree? Do I hear any dissenting voices? No. That is the way the schedule will then sit.

Interjection: What you are saying now, Mr Chairman, is that we meet at 10 o'clock on Thursday and two o'clock on Wednesday?

The Chairman: We will only have one deputation on Thursday and we will only have one deputation on Wednesday. The Wednesday deputation will be at 2 pm, unless I am wrong. We stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1650.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989

TUESDAY 29 AUGUST 1989

Morning Sitting



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Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Connolly, Margaret

From the Metropolitan Board of Commissioners of Police:

Rowlands, June, Chairman

From the Metropolitan Toronto Police:

Beauchesne, Normand, Sergeant, Chief's Staff

From the Office of the Public Complaints Commissioner:

Singleton, Edward R., Chief Administrative Officer

From the Ministry of the Attorney General:

Scott, Hon Ian G., Attorney General (St. George--St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 29 August 1989

The committee met at 1010 in room 228.

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989
(continued)

Consideration of Bill 4, An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984.

The Chairman: We have a quorum. The first presenter this morning at 10 o'clock is not here yet. I understand that Margaret Connolly is here, so Mrs Connolly, perhaps you would like to come forward and take a seat at the table. There is a written brief by Mrs Connolly that is at present being photostated and will be available to members shortly, but I feel we should get on with the meeting.

If you would like to have a seat and identify yourself for purposes of the record and Hansard, Mrs Connolly, you have half an hour. You can use all of that, if you wish, for your presentation, or if there is some portion of it left over we will have questions from members. Perhaps you would like to proceed.

MARGARET CONNOLLY

Mrs Connolly: I am Margaret Connolly from London, Ontario. Thank you for granting me this time and the opportunity to speak before you. I am here today to urge this committee to please consider endorsing the enactment of Bill 4. We need a public complaints investigation bureau to investigate our complaints against the police, because our present complaints procedure is not working.

I have been through our complaints procedure twice on the same issue, once in 1977 through 1980, and again in 1986 through 1989, and neither time was my complaint resolved at any level to my satisfaction.

I have been a victim of real estate fraud that involved two London lawyers and the police. Several times I called the London Police Force to assist me with problems I was having on our two abutting residential properties that my family had owned since 1923 and 1942, but the police refused to assist me. As a result, there was extensive property damage, theft, interference with an insurance claim and interference with the dissolution of an estate.

On two occasions, the police came on to these two properties where I was born more than 60 years ago and they physically restrained me from protecting my own property and from exercising my right to administer my mother's estate, a right granted to me by the surrogate court of Middlesex county. Both times property was forcefully taken from me.

The first time, the police confined me in the house while they allowed some men to demolish our garage against my will and to truck away the lumber and the contents of the garage that belonged to the estate and to me. The

second time, the police arrested me on the veranda of our family home and charged me with trespassing. While they confined me in their police car, they allowed two men to break into this house and take possession of it. They themselves went into this house and removed all of my possessions.

This deed of land that I am holding in my hand is both invalid and fraudulent. I have given the police indisputable evidence which verified that the solicitor knew he was drawing up an invalid deed while there was no one to administer the estate to whom this property belonged. The solicitor obtained this deed through misrepresentation, changed its contents and the date, and the deed was subsequently registered without my knowledge or consent.

This statutory declaration, form 1, Planning Act application for consent that I am holding is a perjured document. The police had absolute evidence that this document was drawn and witnessed while both solicitors knew the information on this document was false. This document was drawn for the purpose of correcting the title to the property obtained through this invalid and fraudulent deed.

Both of these documents are in public files and the police refuse to act on them. Deputy chief of police and complaints officer W. M. Johnson has said that the fact there is false information in public files is a civil matter, but I am adamant in my belief that the making of a false document and putting it into circulation is a criminal matter. I might add that the son of one of these solicitors is an acting crown attorney.

Our police complaints procedure has not worked and it will not work as long as the police cover up one another's wrongdoing. For example---

The Chairman: Before you put this on the record, I should tell you that there is no privilege in this committee.

Mrs Connolly: I am sorry.

The Chairman: There is no privilege. Unless you have evidence or this is fair comment on the names of these people, you are putting them on the public record and could be placing yourself in some jeopardy from a civil standpoint. I just tell you that beforehand.

Mrs Connolly: I do not mind. I would take an oath on what I am saying.

The Chairman: That is fine. I just thought I would caution you so you do not find yourself in difficulty later on.

Mr Kormos: Obviously this woman has been victimized so much to date that at this point there is little more it appears anybody could do to her.

Mrs Connolly: No.

The Chairman: All right. Go ahead, Mrs Connolly.

Mrs Connolly: I would even be willing, if you wished, to give you the names; everything.

The Chairman: Go ahead.

Mrs Connolly: Both the London Board of Commissioners of Police and the Ontario Police Commission knew that one of the policemen who allowed the demolition of our garage and theft of our property did not submit his report of this occurrence. The second officer, who did submit a report, did not write it until three months after the event occurred. This report is now missing from the OPC file.

I have substantial evidence which shows that the former deputy chief of police, Fred Bruce, misled the board of commissioners of police and the Ontario Police Commission in 1977 and 1980 by submitting information to them that was irrelevant to the demolition and theft of our property, but he made it appear relevant. He also fabricated evidence in his investigative report, dated 9 February 1977, but the Ontario Police Commission ignored my request to present my evidence. The board of commissioners of police never heard or saw my evidence because I was not allowed to attend its hearing. I was told that my correspondence would be presented and I was given the wrong date of the hearing.

As a result, this real estate fraud continued. I would also like to add that the present complaints officer and deputy chief of police, W. M. Johnson, and the present chief of police, L. Shipley, were both present at this hearing.

On 26 July 1988, I was finally allowed to present my complaint against the police to the London Board of Commissioners of Police, but the hearing was severely controlled to the point that the board would hear nothing that was in its file, but only of any new developments and only after the date of 1 January 1986.

The only new development was that Staff Sergeant Alexander Wright knowingly submitted false and misleading information in his report, occurrence 1075651, in favour of the two lawyers he was investigating. The board allowed me to read several pages of evidence that supported my allegation against Staff Sergeant Wright. To my amazement, the board dismissed all my evidence and claimed that Staff Sergeant Wright's investigation was thorough and conclusive. My personal opinion is that this board is not only incompetent; it is corrupt.

After waiting almost seven months for an appointment, I was able to appear before the Ontario police commissioner, W. D. Drinkwalter, to present my complaint against the police on 9 November 1989, but Mr Drinkwalter was not interested in hearing my complaint against the police. He questioned me about the two lawyers. In spite of the voluminous amount of evidence I had with me with respect to the police, Mr Drinkwalter was only interested in the statement of adjustments that was prepared by one of the two subject lawyers. He refused to hear or see my evidence which I held up to him regarding the police.

This report, Reasons with Respect to a Complaint, is so riddled with errors and fabricated evidence that it is inconceivable how a person of Mr Drinkwalter's stature could write such a report. Perhaps this is the reason his hearings are not recorded electronically so there is no evidence available as to what was really said at the hearing.

Also, Mr Drinkwalter reported that my allegation that the Ontario Police Commission was misled in 1980 was unfounded. How could Mr Drinkwalter come to this conclusion when almost half of the London police file 86165, sent to the

OPC by the London police, is missing and Mr Drinkwater refused to either hear or see my evidence?

1020

Deputy chief of police and complaints officer W. M. Johnson and the London Police Association administrator, Gordon Noels, have said that a civilian review board is not needed in London, that the system we have now works, that it has never been proven that the board of commissioners is not doing its job. The fact is, this system works for the benefit of the police but not for the benefit of the citizens of London.

I am a Second World War veteran. I never thought I would see the day when uniformed police would come on to my property, confine me in my house and oversee the destruction and theft of my dead family's possessions. There is no more heinous crime than destroying the possessions of the dead before the eyes of those in mourning and I was in mourning for my then recently deceased mother. These things happened in Nazi Germany during the war, but this is peacetime in Canada and they are happening right here in London.

Mr McGuinty: I think your presentation was certainly very moving. I appreciate the frustration you have endured, as is expected when one individual tries to deal alone with the formidable bodies you referred to here, but have you had legal counsel along the way? It seems to me that the substance of the situation you outlined is a matter more for legal action than perhaps simply directing it towards a complaints mechanism. Have you had legal counsel along the way to pursue this?

Mrs Connolly: Yes, I have. I have a letter with me that I will not go into, but this is it. This is quite a lengthy letter by a lawyer who did extensive work for my benefit regarding the Planning Act. She would not take this case because I do not have the money to pay her. I had been going to legal aid since 1976. In 1988, I went to legal aid for the last time and I asked them, "May I please apply for legal aid?" They telephoned the police. The police came and they said that I was trespassing, that they did not want me up there and I was to leave. I was able to get some written evidence from them that they were denying me the right to apply for legal aid. This is it. The policeman has written and signed this. I have not been back. This is 24 March 1986.

I have also contacted the Law Society of Upper Canada. I have its letter right here and I will read it: "This has to do with this perjured form 1 application for consent. The second severance application which was made by Mr Nelligan was intended to correct certain deficiencies left over from the first severance application. This fact is supported by the material provided by the city of London. As such is the case, there does appear to be good reason for the second application."

I do not know whether you would want me to continue. It is lengthy and wordy.

Mr McGuinty: No, I think that answered my question. Thank you very much.

The Chairman: Any further questions from any members of the committee? Mrs Connolly, you have travelled a long way to assist the committee and we appreciate your coming before us.

Committee members, the first delegation is not here. The next delegation is at 11 o'clock this morning. They are not here either. So we will stand adjourned until either 11 o'clock or the first delegation arrives, whichever occurs first.

The committee recessed at 1028.

1055

The Chairman: I recognize a quorum. We have with us June Rowlands, chairman of the Metropolitan Toronto Board of Commissioners of Police. Joanne Campbell is not here, I gather.

Ms Rowlands: No. She has not come along, but John Campbell, the executive director of the board, is with me this morning. I believe we have some copies too to distribute.

The Chairman: All right. Please give those to the clerk and perhaps you would be good enough to have a seat, so we can record your words on Hansard for posterity.

All of the members now have a copy of the brief. Perhaps just for formal purposes for the record, would you please identify yourselves to the gentleman to your right and then we can proceed. We have allocated half-hour periods for deputations. You can use all or any part of that and if there is time left over, there will be questions asked, I am sure.

METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE

Ms Rowlands: I am June Rowlands, chair of the board of commissioners of the Metropolitan Toronto Police. Beside me is John Campbell, who is the executive director of the board.

The brief I am going to present is printed on both sides of the paper in the interest of conserving paper. It is a little difficult flipping it over, unfortunately. I apologize; it was not clipped quite properly.

I am very pleased to be before your committee this morning on behalf of our board to make a presentation on the police complaints procedure. Our force has been directly affected by the Metropolitan Toronto Police Force Complaints Act since its inception as a pilot project in 1981, and we therefore have had a great deal of experience with its operation. This experience has brought forward a number of issues which we feel are worthy of review.

The bill before you seeks to permit the extension of the act to other municipalities at their request. It is therefore, in our opinion, an appropriate time for us to put before you a number of considerations that have arisen during the years the act has been in place in Metropolitan Toronto.

The following are the observations of the board:

1. The concept of civilian review.

The board fully supports the concept of civilian review. This has been its position since 1975, when it adopted the recommendations of the Maloney report. That study was commissioned by the board and the board urged the provincial government to implement a civilian review process.

2. There should be a province-wide system for civilian review. The board agrees with that and indicates an amendment is required.

The bill before you, of course, is that amendment. The current act applies only to officers of the Metropolitan Toronto Police Force. The board strongly supports a mandatory, province-wide system of civilian review in the interest of fairness and to ensure that the public throughout the province is served uniformly.

The format of this brief is perhaps a little unusual. What the brief is doing is responding to issues that have arisen from time to time and they have come before the board in the form of briefs from our association and also from the officers. We deal with these issues one by one.

3. The conduct of officers in their private lives should not be subject to the complaints process. The board agrees with that and believes an amendment is required.

Recently, a test case was brought before the courts on this issue and the court ruled that under the current wording of the act, the public complaints commissioner has the authority to investigate such complaints. The test case involved two off-duty officers who were at a cottage and who became involved in an argument with a neighbouring cottager. The officers did not identify themselves as police officers and no other citizens were present. The other cottager only discovered later that the men were police officers, and then laid the complaint.

The board is aware that, as a result of discipline cases tried under the Police Act, a body of decisions has been developed which clarifies when an officer is acting in an official capacity, that is, whether or not the officer is formally on or off duty. The board feels that the complaints act should be changed so that the conduct of officers acting strictly in their capacity as private citizens should not be subject to the complaints process. The criteria to determine whether a police officer is acting in his capacity as a private citizen should be the same as at present under the Police Act.

4. The act currently requires that the burden of proof to make a finding of misconduct must be the criminal standard of "beyond a reasonable doubt," but the evidence admissible at board of inquiry hearings may be that of the civil standard as set out in the Statutory Powers Procedure Act. The board agrees with this. It feels that no amendment to the act is necessary.

Policing is unquestionably considered a professional occupation by our society. Specific and lengthy training is required to become a police officer, and a formal certificate must be obtained before one can be appointed to the position. As a result, our society is prepared to treat police officers on the same level as other professionals, such as doctors and lawyers, but also requires of them the same high standards of conduct which are to be maintained by appropriate means of scrutiny. Police officers, however, also face unique circumstances that do not apply to other professionals. In particular, if an officer charges a citizen with a criminal offence, then only evidence which meets the highest standard may be used to obtain a conviction.

The board notes that boards of inquiry are administrative tribunals similar to the bodies that discipline other professionals. At hearings of these other tribunals, the civil standard of evidence applies because the issues at hand are ones of professional conduct, not criminal conduct. For that matter, the internal discipline tribunal of the force also follows a civil standard of evidence and this has been upheld by the courts.

The board believes that in reviews of their professional conduct, police officers should be dealt with as professionals and therefore the civil standard of evidence should be maintained. The act, by requiring a criminal standard of proof to make a finding of misconduct, properly recognizes that police officers are more accustomed to such a standard in their professional capacity. The board feels that this is appropriate and that the standard of "beyond a reasonable doubt" should be retained.

5. There should be a role for the chief of police with respect to assessing penalty. The board agrees and feels an amendment is required. This was the issue that was the most controversial before the board.

The board recommends that, after a finding of guilt has been determined, the chief or the chief's designate should be permitted to make submissions to the board of inquiry regarding the penalty for an accused officer.

6. Section 13 dealing with frivolous and vexatious complaints should be amended. The board agrees an amendment is required.

These frivolous and vexatious complaints take up an enormous amount of time. That has been our experience. Chronic complaints are currently covered by section 13 in the act, but this section has some inadequacies. Every complaint, no matter how obviously frivolous or frequently resubmitted, is subject to the complete complaints process. Moreover, clarification is required as to who should bear the onus of declaring that a complaint is frivolous.

The board recommends that this section be amended to provide for the following procedure. The police should continue to investigate all complaints in the first instance as they do now. However, if a citizen establishes a pattern of frivolous complaints, the police may present the evidence of this pattern to the public complaints commissioner with a request that the citizen should automatically be referred to the commissioner for a ruling as to whether an investigation is necessary.

The board notes that the requirement to investigate all complaints, no matter how frivolous, wastes the time of all parties involved. This only detracts from the attention that should be given to valid complaints.

7. The act should provide for an adequate disposition when an officer has acted in accordance with all regulations, bylaws and statutes. The board agrees that an amendment is required.

This issue is felt quite strongly by the force. At present, even when an officer has acted properly in all respects, the disposition of the complaint will read "No action warranted."

This disposition has connotations which do not reflect the reality of some situations. For example, an officer may follow every proper procedure for having a car towed, but a citizen may nevertheless make a complaint that the tow was unfair or improper. If it is found that the officer was merely performing his assigned duty and had followed all procedures correctly, the disposition of "no action warranted" nevertheless implies that the officer must have done something wrong to provoke the complaint or the case just was not strong enough to establish guilt.

The board recommends that the act be amended to provide an appropriate disposition to deal with these circumstances.

8. There should be a time limit within which complaints must be registered. The board agrees an amendment is required.

It is unclear at the present time whether the six-month limit provided for in the Public Authorities Protection Act applies to the complaints act. The board feels that this matter requires a change to the complaints act to provide for greater certainty and notes that the chief of police and the public complaints commissioner previously made a request to the Attorney General that this be done.

The board recommends that the act provide that complaints must be submitted within six months of an incident, subject to the public complaints commissioner having the authority to grant an extension of up to a further six months.

9. Clarification is needed as to how complaints are designated into the categories of minor and major. The board agrees with this and an amendment is required.

There are very significant consequences that flow from the decision to designate a complaint as major rather than minor, not the least of which is that the penalties for conviction on a major complaint can include dismissal from the force. The police force presently prosecutes all discipline charges as major offences.

10. Issues (a), (b) and (c) are frequently brought up: (a) A judge or retired judge should chair a board of inquiry or sit alone when appropriate; (b) a police officer of equal rank or experience should be appointed to boards of inquiry; and (c) the police officer should be able to make one peremptory challenge to a person proposed for membership on a board of inquiry. The board disagrees with all these suggestions and does not believe any amendments are necessary.

The boards of inquiry are administrative tribunals based on the labour arbitration panel model. Labour arbitration panels usually consist of one representative chosen by labour, one by management and a chair chosen jointly. Similarly, the act provides for boards of inquiry to be drawn from appointees recommended by the police commission, the police association, Metro council and the Solicitor General and Attorney General. Thus, all parties including the association have the opportunity to put forward for appointment persons who will be sensitive to their concerns. As such, it is not appropriate to grant the parties the authority to challenge the designation of persons proposed for the board of inquiry.

Requiring that a judge or a retired judge preside as chair would be a departure from the philosophy underlying the formation of boards of inquiry, giving them a more legalistic rather than an administrative character. This, and the suggestion that police serve on the panels, would also affect the perception that these panels are intended to provide civilian review of police conduct.

For these reasons, the board rejects the suggestions set out in (a), (b) and (c).

11. There should be an appellate body with discretion to hear evidence it deems advisable so that appeals can be heard on the merits. The board disagrees with this and does not feel an amendment is necessary.

The board noted that under the current legislation, appeals can be made

to the courts on matters of fact and/or law and the courts can decide what evidence is appropriate to consider. The board therefore does not support this suggestion.

12. The media should be limited to reporting on evidence presented at complaint hearings only after a finding of misconduct has been made. The board disagrees with that and no amendment is necessary.

The board notes that the hearings of administrative tribunals, including the internal discipline trials of the force, are normally held in public and is of the view that this is an appropriate policy. The board also notes that endeavouring to limit reporting of such hearings may be contrary to the Charter of Rights.

1110

13. The bill of rights for police officers should be incorporated into the act. The board disagrees with this.

The bill of rights for police officers, and a copy is attached, was proclaimed by the board at its meeting on 3 June 1982. The board continues to support the bill of rights, but notes that its application has possibly been affected by judicial decisions that have been rendered since its proclamation. Nearly all the provisions of the bill of rights are incorporated in the complaints act and four exceptions do not appear to unduly harm the position of the police officer.

14. Clarification is needed as to what statements officers should be required to give. The board disagrees with this and does not feel that an amendment is necessary.

The board notes that police officers have a duty to explain their actions, and there are rules in the act that govern what statements are required to be given and what use can be made of these statements. The board feels that no changes are required in the act and it is the responsibility of the public complaints commissioner to ensure that statements supplied by police officers are handled properly.

15. Complainants should be required to co-operate with police who carry out the initial investigation. Here again, the board disagrees with this and does not feel an amendment is necessary.

The board notes that citizens must retain the right to be able to go to the public complaints commissioner with their complaint. The board therefore does not support this suggestion.

16. The police investigation should be removed from the act entirely or in part. The board disagrees and no amendment is necessary.

The board feels that the police should continue to conduct the investigation in the first instance. The burden of proof for a finding of misconduct should continue to be beyond a reasonable doubt.

17. The public complaints commissioner should be able to initiate a complaint, even when no person directly affected by the allegation of police misconduct will come forward. The board disagrees with this.

The board notes that a citizen can go directly to the public complaints

commissioner to lay a complaint. Therefore, citizens do not have to experience any inhibitions they might otherwise feel if they had to deal directly with the police. The board feels that this provides sufficient protection of the public interest in having complaints investigated and it is appropriately addressed in the present legislation.

18. Similarly, the public complaints commissioner should be able to initiate a review of a complaint investigation. The board disagrees and no amendment is necessary.

At present, the public complaints commissioner may commence a review if the citizen or the subject police officer request it. The board feels that this provides sufficient protection of the public interest and it is appropriately addressed in the present legislation.

19. The chief of police should be required to give a decision within six months of the complaint being made, with the public complaints commissioner having the authority to grant extensions. The board disagrees with this.

The board notes that this requirement would have legal implications affecting the procedures followed when an officer is subject to a complaint and a civil or criminal action arising out of the same event. If a deadline is to be imposed, it should commence from the time the chief receives the investigation report.

20. There should not be a reference on the officer's record when the officer admits misconduct during the informal resolution of a complaint. The board agrees with this and feels an amendment is required.

The board feels that such references should not be retained on the officer's record. The public complaints commissioner has the final approval of informal resolutions and the board notes that records are kept by the public complaints commissioner.

21. The consent of the public complaints commissioner should be obtained for all informal resolutions and withdrawals. The board agrees with this and feels that an amendment is required here.

The board agrees with this suggestion, which protects against any possibility that the police might unduly influence a citizen to have a complaint withdrawn or informally resolved.

22. Officers who resign should continue to be the subject of the jurisdiction of boards of inquiry. The board disagrees with this and an amendment is required.

The board does not agree that boards of inquiry should retain jurisdiction over officers who resign before the proceedings have been completed.

That is our brief and the current thinking of the board.

Mr Chairman: If there are any other statements to be made by either yourself or the gentleman to your right? If not, I will call upon the members.

Ms Rowlands: No, nothing further at this point.

Mr Kanter: First of all, I would like to thank the commissioner, and

I presume she is speaking on behalf of all of the commissioners, for a very comprehensive and relevant and I think quite well balanced brief. It certainly addresses many of the issues before this committee.

I do have questions, with respect particularly to one aspect of the recommendations of the board: item 19 on page 11, which relates to timing.

I took a look this morning at the report of the police complaints commissioner for Metro. I was actually quite surprised to find that the number of days between the time a complaint was filed and a decision by the chief of police averaged 190 days, more than six months. I presume that since that is an average, about half of them obviously were done in less than six months and half of them in more than six months.

I am also aware, probably because it was very handily included in the police complaints commissioner's report—there is a report of a case, I believe Ramsay may have been the name, where the Divisional Court, I believe, expressed some concern about the treatment. The Metro Toronto Police Force and the Metro police commissioners were mentioned. This may have been before your time, Madam Commissioner; I am not sure.

The court suggested that the Metropolitan Police Force, with the approval of the Metropolitan Board of Commissioners of Police, have effectively frustrated the Ontario Legislature's objective to provide a cheap, expeditious and effective means of investigating alleged misconduct on the part of the Metropolitan police officers by refusing to review a final report until civil suits have been disposed of. They just refused to do it indefinitely.

In other words, there has been some concern expressed by the courts. The statistics show that a fairly long time is often involved before this report from the police chief is submitted, and I think it was the desire of the Legislature—I was not here at the time it was passed—that the complaints procedure should be an expeditious one.

Therefore, I would tend to support the idea of some sort of time limit on the chief of police. I would suggest that this may have been one of the weaknesses in the system, which generally has worked fairly well. I think the Attorney General (Mr Scott) indicated yesterday that he supported the idea of police investigation because he did not want stonewalling or delays or that kind of thing.

I guess the point of my question is: Should there not be some pressure, time limit, whatever, on the chief of police to ensure that complaints are not just delayed indefinitely? That is really the question.

Ms Rowlands: Yes, and of course it is a legitimate concern and I can see the reasonableness of the case you are putting forward, that unless there is some time limit, there is always the possibility that—

Mr Kanter: I think the statistics show that fact is a truth.

Ms Rowlands: Yes, but there does not appear to be any evidence, as we have looked at it, that the length of time taken is more than the length of time required. You will notice the comment here: "The board notes that this requirement would have legal implications affecting the procedures followed when an officer is subject to a complaint and a civil or criminal action arising out of the same event."

Mr Kanter: I did not understand that comment.

Ms Rowlands: There is a problem there and there is a confusion, I think, on the part of everyone, because the officer, of course, can be subject to the procedure under the complaints act and also a criminal action in the court. There is a problem. I would like to refer to Sergeant Beauchesne here, but I understand the decision now is that both can proceed at the same time. I am not sure whether that is the present position or not. Do you happen to know?

Interjection.

Ms Rowlands: There is an area of confusion here.

The Chairman: If you are going to speak, perhaps you could come up and sit next to the mike.

Ms Rowlands: I am sorry; perhaps I should have asked. I did not realize we would get into something quite as legal as this.

The Chairman: Well, it is not. We are preserving this for posterity, you see, so that you will one day be able to look at your Hansards and wonder whether you really said that or not.

Mr Beauchesne: In relation to that comment, there was some difficulty with that at some stage. Mr Singleton is sitting here and has been involved in some of these discussions with the deputy chief, I believe. I do not know what the final outcome is today, and Mr Singleton may be able to assist the committee.

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Mr Singleton: Sorry, I was talking to the Attorney General and I did not hear the question.

Ms Rowlands: It is this whole question with respect to time limits and whether there should be a six-month time limit within which the chief must report. The board is arguing, "No, it's not necessary to indicate a time limit, because there's the whole problem of civil procedures and criminal procedures, as well as procedures under the Metropolitan Toronto Police Force Complaints Act." I know this is a legal problem. I know it is something that has been under discussion and I do not know what the disposition of this is, but when the board considered this, this was the board's opinion.

Mr Singleton: I think there were two areas of concern. One was the length of time taken to conduct the investigation and the preparation of the final report. Those investigations are oft-times delayed because of outstanding criminal cases, those criminal cases perhaps being against the complainant, where the officer does not feel he can enter into an investigation because of the evidence he might be required to give in a criminal trial.

The second area of concern is the length of time between the chief's receiving the final report and the chief's making a decision. I think the Ramsay case dealt with the length of time it took the chief to make a decision after he received the final report, not with the length of the investigation leading up to the final report. I think it was felt that once the final report had been delivered to the chief or the deputy chief, he ought to have made a decision, and that where he was seeing a conflict between his decision and the

possible outcome of a civil case, that conflict did not really exist.

Mr Beauchesne: That is correct. That is what the Ramsay decision did say, that two of them could proceed simultaneously.

Mr Kanter: Would it be fair to say as a result of this discussion that the commission would perhaps be less opposed to a six-month deadline or perhaps an even shorter deadline from the time the chief receives the investigation report? Is that your position?

Ms Rowlands: Yes, you will notice that in the last sentence. If a deadline is to be imposed, it should commence from the time the chief receives the investigation report. That would seem reasonable to us.

The Chairman: Before we proceed with the balance of the questioners, I think we should have unanimous consent that we would proceed beyond 11:30 and go to noon; otherwise we are going to have to cross a lot of you people off the list. Do we have unanimous consent to that effect? Okay.

Mr McGuinty: We had a presentation yesterday from the Police Association of Ontario. Their legal counsel referred—I am not a lawyer I and I do not apologize for that.

Ms Rowlands: Neither am I.

Mr McGuinty: All I can bring to bear upon this is the dictates of common sense.

He was concerned about the rules of evidence that apply during these hearings. You refer here in number 4 to the civil standard. What does that mean?

Ms Rowlands: The civil standard is as set down in the Statutory Powers Procedure Act. It is a lesser standard than the criminal standard, which is beyond a reasonable doubt. It is discussed quite thoroughly here in the brief. It is the feeling of the commission that the present act is reasonably balanced in saying that as far as the sentencing is concerned, it has to be beyond a reasonable doubt, but we will listen to evidence which would be allowed under the Statutory Powers Procedure Act.

The Chairman: I think Mr McGuinty is mixing apples and oranges. He is mixing the burden of proof with the way it is proven. I think what he was referring to was that the police commission yesterday was unhappy with the fact that you could throw in things at a hearing that would not be tested by oath and so on.

Ms Rowlands: We considered this very carefully at the commission, and I think that is also the position of our force. I am not sure what they are going to say when they come before you. I think, perhaps, that may be the position of the association when they come before you; I do not know. But the board listened to all of these arguments quite carefully and came to the conclusion that the present act is fair, because certainly evidence can come forward before that board of inquiry, and that evidence can sometimes be extremely helpful.

Hon Mr Scott: I do not know whether Mr McGuinty would accept the comment of a lawyer in support of the point he makes.

The Chairman: Probably not.

Mr McGuinty: Reluctantly.

Hon Mr Scott: I think the point made yesterday, just to have your comments on it, was that you seek the civil or lesser burden in respect of the admission of evidence.

Ms Rowlands: That is right.

Hon Mr Scott: But you seek the higher burden in respect of conviction for evidence.

Ms Rowlands: That is right.

Hon Mr Scott: That is very unusual, because in most civil cases you have the civil burden for the introduction of evidence and the civil burden for deciding the case. In criminal cases you have the criminal burden for introducing evidence and the criminal burden for deciding it. The mixing of apples and oranges is perhaps in your submission. Why do you want a civil burden for introducing the evidence but yet a different burden for the conviction?

Ms Rowlands: Is that a question?

Hon Mr Scott: I think that is what the English professor was referring to.

Ms Rowlands: It is my understanding that that is what the act requires now.

Hon Mr Scott: Yes.

Ms Rowlands: I think I have answered it as well as I can. The commission listened to the argument that was obviously put forward by the Ontario commission and felt that this works well. In our experience it has worked fairly well. The criminal burden of proof is required for sentencing.

Mr McGuinty: I have taken a poll of Metro police, hardly a representative sample. I stopped two on the street this morning and asked for their comments.

Ms Rowlands: Oh, they will not like this.

Mr McGuinty: I think that is very significant. Again, it was not a representative sample; one was a sergeant and the other a policeman on the beat. They both pinpointed this particular business. They thought the kind of evidence, the kind of sometimes hearsay evidence which is presented, would not be accepted ordinarily in a court of law and they feel somewhat handicapped by that. Second, the other point they suggested—and I am delighted you have taken it into account—is this business of not having on the officer's record a statement when no action is warranted, because that lingers.

Ms Rowlands: Yes, that is right.

Mr McGuinty: Another point. "The board strongly supports a mandatory province-wide system of civilian review." Do you suggest that that system be patterned after the Toronto experience?

Ms Rowlands: We certainly would support that. We would support certain amendments to the act, and I think I have pointed those out quite clearly. We have indicated where there is controversy and where we support the act as it now stands. With the amendments that we have suggested to the act, yes, we consider that it should be the basis.

Mr McGuinty: Those of us who are outside of Toronto—and some of us have some police experience, either as delinquents or otherwise—feel that we appreciate your magnanimous concern for what is going on.

Ms Rowlands: It is not particularly magnanimous. I hope it is realistic.

Mr McGuinty: Frankly, I think it is just a bit presumptuous.

Mr Callahan: What about Ajax?

Mr McGuinty: There is life after Ajax. In my area we have five police forces and we have a review procedure. This is the Ottawa Police Force I am referring to, which I think is rated very high; in fact, I think the gentleman yesterday said it was number one in the province. I speak with my colleagues on that force and my colleagues on the police commission, and it is operating very smoothly. They can see no need for refining it along the lines of the Toronto pattern. Really, I appreciate your concern but, as I said, this is interpreted outside of Toronto as just a bit presumptuous.

Ms Rowlands: Would you like me to answer that, Mr Chairman, or is that just a statement?

Mr Callahan: I think that had a question after it, but it was rhetorical.

Ms Rowlands: So I will not rise to the bait.

The Chairman: I think we will move on, if we could, to Mr Epp.

Mr Epp: June, with regard to item 22, do you want to elaborate on that a little?

1130

Ms Rowlands: This is a problem. After an officer resigns, the process can continue. Since the maximum penalty under the act is dismissal and the man has already left, somehow it does not seem reasonable to continue procedures. That is simply our opinion. That is our position on it.

Mr Epp: The reason I raised that is that we had Mr Borovoy with us yesterday and he cited a case where an officer went before the complaints commissioner and then quit and went to work for another police commission in the province.

Ms Rowlands: Oh, dear.

Mr Epp: I did not see that as being fair.

Ms Rowlands: No.

Mr Epp: The new police commission, or whoever hired him, must have been aware that he was being investigated here. They may not have been, but they probably were aware, and they gave him another job. Would you distinguish between those, so that if he went to work for another police commission, then that complaint should continue in operation?

Ms Rowlands: It should continue somehow in the process. Whether an officer working in another jurisdiction should continue to be subject to the Toronto complaints process, I suppose is the question. Perhaps this is one of the arguments for a province-wide mandatory system. We had not anticipated that kind of situation when we were dealing with this particular issue, but I would certainly agree with you that there should be some way of continuing the investigation, the inquiry.

Mr Epp: I have one other. It has to do with number 6, dealing with frivolous and vexatious complaints.

Ms Rowlands: Oh, yes.

Mr Epp: You say here that if a person initiates a complaint again, then you have to go through the whole apparatus again. Do you really? You have done all the work. If he initiates it again three months later or 13 months later, do you have to go through the whole thing again?

Ms Rowlands: Of course, certainly the file has to be brought out and updated. When I was first appointed chair, we were inundated with these kinds of complaints. They took an enormous amount of time. I could not believe that in fact each one has to be submitted to the force for investigation.

One woman wrote a very good letter. In responding to it, we discovered she was already in hospital and she insisted on jumping into Lake Ontario and swimming with the ducks. She could not swim and she did not like being pulled out. This was the complaint that had to be investigated.

There are other complaints of people who are essentially ill, but they have to be investigated, and they come forward time and time again. It is the time these things take up. It is the time that is required. For a while, when I got the letters, I was setting them aside. I was told: "You had better not do that because you are risking something if you do that. You've got to put them into the system."

We are simply suggesting a procedure that when it is obvious the complaint is frivolous, there is a procedure that can handle it. It takes a lot of time. That is the difficulty.

Hon Mr Scott: When would it be obvious, if you had not investigated it?

Ms Rowlands: You can tell by the letters that come in very often.

Hon Mr Scott: What would you find in a letter that would lead you to believe—

Ms Rowlands: All right. For example, there was one letter that was five pages and was extremely well written. It was a very interesting story. I was absolutely intrigued with this. I thought, "This has to be investigated; we are going to have to investigate it clearly," until I moved about three quarters of the way down to see that her dentist was also involved in the

whole situation and had implanted a radio in a filling in her tooth. It was clear then, when I went back, that this was someone who was ill and who had this wonderful story. It has to be investigated, you see.

Hon Mr Scott: If she had said the police officer had implanted the radio in the house, it would not have been considered frivolous.

Ms Rowlands: That would have to be investigated, certainly. I think it is just using the rule of common sense. It becomes obvious that you are dealing with someone who is paranoid, highly intelligent and very imaginative. That is the difficulty. After I was appointed, we must have received a couple of dozen of these kinds of complaints. They were well known to the officers. They would say, "Oh, here they are again." It has died off somewhat since.

The Chairman: We are going to jump over to you, Mr Hampton. Are you ready?

Mr Hampton: Thank you, Mr Chairman. I could always use more time but I will jump in at this point. I want to ask you a general question because I find all of this very puzzling. When we have a police complaints procedure, are we mainly serving a private interest, that is, the investigation and the resolution of private complaints, or are we serving a public interest, trying to maintain public respect and public integrity with respect to our police forces?

Ms Rowlands: Is that a general question? My view is certainly the question of the public interest. It is paramount in these situations. The perception of fairness, the perception of evenhandedness, the perception of impartiality, I believe all these are very, very important issues to the public when they are dealing with the police and feel they have a legitimate complaint.

Mr Hampton: So it is not enough then that someone who has a private complaint about a police officer—

Ms Rowlands: How is a complaint private with respect to a police officer?

Mr Hampton: Let me give you an example: It is not just enough that we resolve those situations where someone raises a complaint that his car was towed improperly or he was stopped improperly by police and so on. It is not just enough that we resolve those disputes, whatever the resolution is, that people go away feeling they had a hearing or they had an investigation. It is not enough just to do that. What has to be preserved, what is an important issue here is police integrity. Our trust and our belief in police forces and the police process have to be upheld.

Ms Rowlands: I certainly agree with that, but it is also a protection to the police. In most of these situations there is an informal resolution. Very few of them go to boards of inquiry. I do not think there are more than half a dozen in a year that go to boards of inquiry here in Metropolitan Toronto. Most of it is done, but it is the public perception and it is also in my view a protection for the police, because if there has been this impartial investigation and they are cleared—mind you, there is some concern with respect to what the record shows, but that is another issue. There is a balance in this thing.

Mr Hampton: Let me ask you this. Item 2, "There should be a province-wide system for civilian review." I try to work this out as a politician in my constituency office.

Ms Rowlands: Listen to what the public says to you, perhaps not so much what the force says.

Mr Hampton: That is the perspective I am coming from. I wonder how the public would perceive it if in one municipality they have access to civilian review of police behaviour, but in the neighbouring municipality they do not have access to civilian review of police behaviour. I wonder how the citizen in the street who maybe does not understand the legal jargon—I wonder whom he or she would blame and I wonder who would get the flak over there being civilian review in one municipality and not civilian review in the next one.

Ms Rowlands: I cannot answer that. It would depend, I suppose, on the seriousness of the situation that had arisen, but we did have one in Metro where there was another regional force involved. The incident turned out in an unfortunate way. Our force was not the primary force involved and yet our force was subject to a civilian review of course, procedures where the neighbouring force was not.

Our force felt unfairly used in that situation. That was from the force's point of view. From the public's point of view, I suppose it would depend on the seriousness of the situation that arose, but certainly it is an area where there could be problems.

Mr Hampton: I wonder if the citizen in the street might incorrectly blame police forces. Why can I get civilian review of this policeman over here, but I cannot get civilian review of this policeman over there?

Ms Rowlands: The public might. It depends. I really cannot answer that. I just do not know.

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Mr Hampton: There are a couple of other recommendations in your brief that I find interesting. We take it that it is the public integrity, the public perception of the police processes that is the most important item here. On page 11, you state that the public complaints commissioner should not be able to initiate a complaint, even when no person directly affected by the allegation of police misconduct will come forward.

I want to give you an example. It is a real example. In Winnipeg, a fairly well respected native individual was shot. There were two internal police investigations of it. In spite of the two internal police investigations there were still some very bad feelings in the air, particularly in the native community but also elsewhere.

If a public complaints commissioner saw this, that there were still very bad feelings in the public, would it not be in the interest of everyone involved to initiate a complaint? I realize that I am doing some mixing of apples and oranges here, but I give you that example.

Ms Rowlands: You are a little bit.

Mr Hampton: You have a situation where from the public perspective, after an altercation between police and a private individual or private individuals, there exists a state where the public or groups in the public are clearly not satisfied. In order to preserve some element of public respect for police processes and to preserve the public view of the integrity of the system, should the public complaints commissioner not be allowed to entertain or to look at conducting an investigation? That happened in Manitoba.

Ms Rowlands: He could certainly entertain it and he could certainly look at it. Obviously, that is his job, but he has to receive a complaint. In your Winnipeg example, did the force receive a complaint and that is why they did an internal investigation?

Mr Hampton: No. It is my understanding that they do not have a police—

Ms Rowlands: How did the investigation go? If there is a shooting, is there a regulation where an investigation has to be held? It is simply our view, and we discussed this thoroughly, that the individual here does not have to come to the police to lay a complaint. The individual may go directly to the commissioner's office to lay a complaint. That seems to be a very sufficient protection.

It seems to me that for an unelected public official to have that kind of power on his or her own to go out on an investigation simply on some rumours, some whatever, some situation, is dangerous. I think that in a democratic society it is not something we can allow. That is my call on that.

Mr Hampton: Let me take you back to step one. What we are interested in is not just the resolution of a private complaint. We are interested in preserving the public perception that police behaviour is appropriate. We are interested in preserving the public interest in these issues. What finally happened in Manitoba is that the government finally had to call a special inquiry even after—

Ms Rowlands: You see, the kind of mechanism that we have here did not exist there and they ran into real problems, from what you are saying. We obviously have a mechanism here where I cannot think of a situation that could arise where people or an individual would feel they could not go to the commission and lay a complaint and indicate what the trouble was.

Hon Mr Scott: We discussed some of this yesterday. Perhaps we can take it away from Manitoba. Suppose the commissioner saw what looked like a police violent act on television in the reporting of a news event and nobody complained to him, it should not mean that his hands were tied. You make the observation that the police complaints commissioner should not be a self-starter, but the police have self-starting powers. They can investigate without anybody complaining to them, and they do, thank God. Why should the commissioner not? I think that is the point.

Ms Rowlands: I would simply answer in this way: It seems to me to give an unelected official, or I guess a person appointed by the province that kind of power to go out and start an investigation—

Hon Mr Scott: The police have that power—

Ms Rowlands: Yes.

Hon Mr Scott: —and they are not even elected.

Mr Polsinelli: they are not even appointed.

Ms Rowlands: They are not even appointed; I realize that.

Hon Mr Scott: No.

Ms Rowlands: But I guess that is what their job is, is it not? That is—

Mr Polsinelli: That is what the police complaints commissioner's job is.

Ms Rowlands: Yes, but not to initiate complaints himself. I realize, I believe, that at the federal level the commissioner there can initiate complaints himself.

One can allow one's imagination to reach out and say, "Fifty years from now there is a government elected in Ottawa that has a desire to establish real control." They want to get real control over that police force. They could destabilize it through the commissioner by simply initiating a series of complaints.

I guess that is ultimately what I see as the flaw. It seems to me that it could lead in extraordinary situations or in a political situation to destabilizing a police force. That is my concern and I am not sure you hand that kind of power to an individual. What we have here now may not be perfect, but certainly people do not seem to show any reluctance whatsoever in coming to the commissioner and laying charges. If there was actual evidence on a television screen of something that looked brutal or something illegal, perhaps the commissioner in that situation could ask the force to investigate. The force would do the first investigation anyway.

The Chairman: We are going to have to move along.

Ms Rowlands: Those are my thoughts, for what they are worth.

Mr Hampton: The Attorney General stole my time. I just want that on the record.

Hon Mr Scott: Make a complaint.

The Chairman: You can make a complaint. It is going to be Mr Sterling and Mr Curling and that will be it from the looks of things unless there is—

Mr Sterling: I have eight questions. Number one is that you mentioned there were a great number of investigations required. Have you considered what it costs in terms of man-hours and expense? Outside of what the commissioner's office is expending, has there been any estimate by yourself as to the cost to your police force?

Ms Rowlands: I understand that this afternoon the force will be before you. They have those costs and they will be laying those before you. I do not have them this morning; I am sorry. I will listen to your next question.

Mr Sterling: My next question, and I have some empathy with regard to Mr McGuinty's position, relates to other police forces in the province. Prior to redistribution, I represented a number of communities that had very small police forces. The town of Kemptville has four officers. I think Cardinal has one or two. Prescott has a dozen to 15. There are those kinds of police forces. In small towns like those, there is very much a different kind of media, press, etc. They all have within those towns people who are quite willing to slander the police or take on the police at the drop of a hat. Do you think the model really lends itself to that kind of community and that kind of support in general with regard to the police?

In the communities I have mentioned, over the period of time I have known those communities, and I have a fairly close relationship with the constituency, I do not think I have had any constituent who came up and said, "The police have done me wrong." I have had municipal politicians, when we are nearing a municipal election, and there is a promotion coming up as to who is going to be chief and who is not going to be chief, try to take on police forces. In one of the small towns there was an attempt by the politicians to make it a political issue.

I just wonder whether or not a sophisticated apparatus like this is really appropriate in those small towns.

1150

Ms Rowlands: I support the concept of civilian review, whether it is a small town, a large town, a city or anything else. How the apparatus would be set up to handle it, I do not know, but that could be thought through, I am sure—one commissioner, perhaps, for a whole large area taking in a number of forces; I just do not know.

I find it hard to believe, but perhaps it is true, that there are no citizens out there who feel they have been unjustly treated by police, even in those small towns with a force of one or two members. I find that hard to believe. It may very well be true, and if it is, of course, then having a system in place is not going to cause a problem, is it? If there are not any complaints out there, if there are not any dissatisfied people, then having the process available is not going to be a problem for anybody.

Mr Sterling: Perhaps you did not catch the point. What I was saying was that there are always one or two people in each of these communities who are quite willing to use whatever process they have to get on the front pages of the weekly press, especially when you approach a municipal election.

Ms Rowlands: But do you not feel that this is some limit and that it imposes a limit and some restraint on those particular individuals if they go up before a commissioner and the complaint is found to be frivolous or unjustified or whatever the disposition of the situation is? I would think again that in those situations this is some protection for the force; particularly if people are taking advantage of a municipal election to bring forward phoney situations, the police perhaps need it.

Mr Sterling: All I can say is, in terms of these particular communities the support for the police is very, very strong—

Ms Rowlands: It is very strong in Metropolitan Toronto, extremely strong.

Mr Sterling: —and when something goes wrong in those communities, if there is an indiscretion, if you want to put it that way, on the part of a police officer, everybody in town knows it within 24 hours anyway. I do not know whether somebody from Toronto resolving a dispute in Prescott or Brockville is the best way to handle it or not.

Ms Rowlands: I would not suggest it would be somebody in Toronto who resolved the dispute. That does not make much sense at all.

Mr Curling: It is unfortunate that time is running out and we have limited time, because I feel very strongly about this presentation. I also feel that it is a very important presentation in that you represent a very important role in the police force carrying out its duties itself. As a matter of fact, I think it is the most important presentation that will be presented here while we are on this committee.

There is an expression that I have lived with, and I think I will die and never understand it. It talks about ignorance of the law being no excuse for breaking the law, which is kind of ridiculous anyhow. No one ever taught me what the law is, but then when you get arrested and pulled over you hear you are violating some law that you never knew of. Therefore, you depend very much on the enforcer to understand and carry out that kind of duty in the manner in which he or she has been trained to do so. But again, over time we have found a tremendous amount of complaining, regardless of whether we have the best—North Americans have the superlative of using all the time, "We are number one," and "We are the best." We still have to continue to adjust and realize that there are problems within the system.

Of course, I regard all policemen as quite professional and quite efficient. Some of them are maybe too efficient or carry out in such a manner that goes beyond their duties in some respects. Having said all that; some of the things I have heard today have told me that what concerns we do have are for the public or the private. That is one of the words I am hearing. Is the public not the private, and is the private not the public? It starts with the individual and then it expands, it becomes the public. We hear that it is frivolous. Some of the most minor things that an organization considers to be frivolous are of great importance to that individual, the private.

If we expand, we say the public is at risk. I will give you an example. People are pulled over constantly, say by the police, an individual, and when you investigate it more, it so happens that the individual is black. His rights or her rights may be infringed upon and when he or she complains about that, it is just a private matter. It may be just frivolous. If it continues to, say, in the last month 20 or 25 individuals are pulled over who are black, the public is at risk here because what happens is that maybe 20 or 30 or 40 of those individuals will arm themselves and take it in their hands to maybe address those concerns. Because we know that, governments will establish commissions and all types of boards and bureaucracies to deal with frivolous, or private matters. One paid individual's job is just to deal with those individuals. As soon as they come forward we are going to investigate that it is frivolous or so. I do not think any complaint is frivolous. It could be dealt with and then regarded, looked into. Because we do not have time I will not go into it in an expansive manner.

On page 3 here—I am going into specifics—they talk about the appeal process. I will come to that soon. This is on the second last line:

"For that matter, the internal discipline tribunal of the force also

allows a civil standard of evidence that has been upheld by the courts. The board believes that in reviews of their professional conduct, police officers should be dealt with as professionals and therefore the civil standard of evidence should be maintained."

At one stage it sounds like, "Let the police handle themselves properly and deal with some of the complaints." In recommendation 11 it says you disagree that, "There should be an appellate body with discretion to hear evidence it deems advisable so that appeals can be heard on the merits." You disagree with that. I am kind of concerned that here at one stage you say, "Whatever is happening there and if you want to carry it to a court, the evidence could then be appealed to a court." Here it says, "Okay, within that body an appeal could be heard or could be dealt with without going to the courts themselves." Unless I am not understanding it properly, at one stage you are saying, "Take it to the courts if you have an appeal," and in this situation you are saying, "No, use a body here that you can appeal to." You say no. Maybe you can comment on that.

The last comment I want to make because of time is that I would like to see that when we leave here, when we completely develop this bill, that it represents the general public at large, meaning that the public includes the police, too. Not that I get the defence to see that while the police—it is just to protect the police in this situation. I would like to see that nothing be called public or private. Everything is private; the way it expands becomes public.

Ms Rowlands: I will try to deal with the issues you raised. First of all, when we speak of frivolous complaints we are not talking about small complaints or private complaints or something that would appear to be not terribly important. We are talking about complaints that are clearly the figment of the imagination of people who are ill. We do get those. We know there are those people, they take an enormous amount of time and detract from time that should be used for important complaints and I indicated that. We simply said that the police itself, the public complaints commissioner or whatever, should not be the ones to judge that this individual is not competent.

1200

We get all kinds of complaints from people who are in mental institutions about police conduct and the police have not been near them for a very long time, of course. There are all kinds of things that are products of someone's imagination. We are simply trying to deal with that group of complaints, and that is what we mean when we designate them as frivolous complaints. Perhaps you could use another word to describe them. On example is the woman who says that the dentist had implanted a radio in her tooth—this kind of thing. They are now all investigated perfectly seriously; we go through the process.

That is an issue separate from what you are suggesting, which is small complaints, such as where someone said that an officer had said that was a private matter. I am not sure what you are referring to because, if an individual complains about being stopped by an officer, that is a perfectly legitimate complaint that can go to the public complaints commissioner. That is not a complaint that is somehow private between officers and the individual they stop. I am not quite sure what you are referring to there.

Mr Curling: I am not quite sure what is frivolous either. If you say

these may be frivolous, that has to be defined.

Ms Rowlands: There are certain individuals who contact the police constantly, perhaps once a week. The files are this thick. They are people who are mentally incompetent. This is the group of complaints that takes up a lot of time. We are doing it and will continue to do it. We are simply suggesting that there is a better use of time, that is all.

Mr Curling: You can define things as "frivolous" or not. I have been in personal situations, such as sitting in an apartment with five or six, waiting to have a party, of course. We had no radio and no equipment. The neighbours saw a couple of us coming in. This was years ago. There was a knock on the door and a policeman came in, saying, "We have a complaint that you have been having a wild party here with loud music." We invited the policeman in to search if he wanted to find the music. Of course, we were waiting for our music, which had not arrived.

He had to go through his complete investigation and what have you. He came back an hour later. I do not want to call it harassment in itself, but I think it was completely frivolous in a manner. The individual on the other side who was hearing noises, for whatever reason was hearing that noise in his head and felt that it was necessary to call the police with about it.

All I am getting at is—

Ms Rowlands: How difficult it is to determine what is frivolous.

Mr Curling: That is right, and many times when an individual has lodged a complaint, I am afraid that someone will rule it, saying, "That sounds frivolous." I just do not know where that "frivolous" line is drawn.

Ms Rowlands: Here we say, "However, if a citizen establishes a pattern of frivolous complaints, the police may present the evidence of this pattern to the public complaints commissioner with a request that the citizen" should automatically refer it to the commissioner. So if another complaint comes in from this individual and it is the 25th one, instead of the police's going through the investigation, it simply refers it automatically to the commissioner. It is out of the hands of the police then, and the commissioner decides whether in fact an investigation should proceed.

It is merely a suggestion here of a procedure which might get us out of the situation that we are in now of spending enormous amounts of time on these kinds of complaints. You can accept it or reject it. Perhaps there is a better way of handling it. That was the best way we could think of as we considered there might be a better way of handling it.

Alvin, I think that you are saying that you consider there is a risk of deeming something to be frivolous at some point that really is not frivolous. I think that this opens the system to that kind of risk. You are weighing it.

Mr Curling: I might make just one other quick comment, though. I know that the complexity of this society and the police administering its duties are more complex than in many other societies. We have a multicultural society here which has been orientated in different police methods and different laws. Some people basically will come maybe from a police state and may be sort of petrified at seeing the uniforms and what have you. That is the kind of sensitivity that has to come with our police force itself.

Ms Rowlands: We understand that, yes.

Mr Curling: I am saying that many things are going back to the frivolous. What may be seen as frivolous is something that has to be dealt with, because some authority comes in dressed in certain patterns and triggers off certain sorts of actions and some paranoid feelings or so on. Sometimes it is not. Sometimes some policemen also feel that because of their uniform they have this great power to go beyond their duties.

Ms Rowlands: All right. Again, it may be the use of the word "frivolous." Perhaps that is not the best word to use in the situation, but I understand your concern.

Is there anything else that you wanted me to reply to?

Mr Curling: Just a few parts, number 11.

Ms Rowlands: Oh, well. It is simply the board's view that the appropriate appellate body is the court. That is what courts are there for. To have another body to do the job of the court does not seem reasonable, that is all; to set up a whole system when there is one there which is supposed to be impartial and I am sure it is.

Mr Curling: Is there any way the commissioners could come back now? Is that not a procedure?

The Chairman: They are always welcome to come back.

Ms Rowlands: You want to talk to us again?

The Chairman: We will be sitting at two o'clock this afternoon. We have a delegation coming in for an hour. In fact, Sergeant Beauchesne will be back. If you want to agree to give them more time after that presentation, it is up to you. We do that by unanimous consent.

First of all, I should ask the deputants whether they can come back.

Ms Rowlands: I would not be able to be here after two o'clock and before four o'clock. I could come back after four, but then I will have a meeting at five this evening. I have a little bit of time in there, not a lot.

The Chairman: I understand. That is not being requested. We appreciate your coming forward to present your views and we will certainly take them into consideration.

The committee recessed at 1210.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989

TUESDAY 29 AUGUST 1989

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Substitutions:

Curling, Alvin (Scarborough North L) for Mr Chiarelli

Epp, Herbert A. (Waterloo North L) for Mr Offer

Johnson, Jack (Wellington PC) for Mr Runciman

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Metropolitan Toronto Police:

Scott, Peter, Deputy Chief of Police, Support Operations

Beauchesne, Normand, Sergeant, Chief's Staff

From the Ministry of the Attorney General:

Scott, Hon Ian G., Attorney General (St. George-St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 29 August 1989

The committee met at 1409 in room 228.

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989
(continued)

Consideration of Bill 4, An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984.

The Chairman: I recognize a quorum. The deputation before us this afternoon is from the Metropolitan Toronto Police Force: Peter Scott, deputy chief, Sergeant Rusty Beauchesne and we have a third person.

Mr P. Scott: May I introduce him, Mr Chairman?

The Chairman: Would you please? You can do that for purposes of Hansard.

METROPOLITAN TORONTO POLICE FORCE

Mr P. Scott: Mr Chairman, ladies and gentlemen, I thank you for your consideration and the time you have given us today to express our views and proposals on improving the Metropolitan Toronto Police Force Complaints Act. My position within the Metropolitan Toronto Police Force is deputy chief. I am also the designated complaints review officer. In fact, I act on behalf of the chief of police and adjudicate on all of the complaints against Metropolitan Toronto police officers. I have done so now for nearly four years.

The Chairman: Excuse me. Could I interrupt you? Just for the record, if you could introduce—

Mr P. Scott: I am just going to.

The Chairman: All right.

Mr P. Scott: On my right is Staff Inspector Murray Cowling. Staff Inspector Cowling is in charge of 30 Metropolitan Toronto police investigators and civilian staff who actually go out and investigate the complaints. I thought I would bring Murray down as a resource person for the committee, because he can actually get down to some of the investigations, how they are done and some of the requirements and be a resource person to you to ask questions to. On my left is Rusty Beauchesne. He is a lawyer and a legal adviser to the police force, and in this case, to me under the complaints act.

"We welcome the opportunity to speak to this bill, because we view it as a positive contribution to policing, one which hopefully will facilitate and maintain public confidence in this force. We certainly do not view it as a threat, for we are, and we have always been, anxious that such shortcomings and misconduct as may evidence itself in our operations and personnel be exposed and dealt with in an appropriate fashion."

These are not my words, ladies and gentlemen. They are quoted from the opening statement made to this committee, albeit differently constituted, by

the chief of police, Jack Ackroyd, on 22 September 1981 in relation to Bill 68, the Metropolitan Police Force Complaints Project Act, 1981.

I can assure you that the police chief and the management of the Metropolitan Toronto Police Force are as committed to the statement of Chief Ackroyd today as they were in 1981. The legislation of any type of civilian complaints system which is acceptable to the politicians, the public and the police is not an easy task. If it were so, Bill 4 would not be the seventh bill to be introduced since 1979 dealing with this matter.

1410

The police force has long recognized that it cannot maintain widespread respect and public support, which it considers among its most precious assets, without public accountability. As such, the force has always recognized the importance of providing an effective means by which a member of the public who feels that he has been wronged or mistreated by a police officer while in the execution of his duties, may have a free and ready means at his disposition by which he may register his complaint, have it thoroughly investigated and satisfactorily resolved expeditiously and fairly.

On the other hand, a complaint procedure which favours the interests of a complainant at the expense of the members of the force is no more likely to succeed or to be accepted. The chief of police of this force and any other police force is the main boundary-spanning person between its members, on one hand, and the political structure and the community on the other. His primary need is a review mechanism that does not undermine his capacity to run the force. Recently, our chief's controls have been continuously challenged by legislatures, politicians, various groups in the community, the courts, the members of the force, the police association and more and more by an aggressive media.

The chief must maintain personal and organizational credibility with the community at large and his officers. To do so, he must convince the community that his officers are not abusing their powers. Counterbalancing this need is a concern that the officers not be unduly hampered in their enforcement activities or demoralized by a review system that unfairly second-guesses them or abuses their rights and self-respect. As such, the membership of the police force needs to be reassured that the legislation provides adequate protection, both in policy and in practice, of its legitimate interests.

Police managers and supervisors need a complaint system by which they can constrain inappropriate behaviour while being able to motivate the officers to perform the services for which they are employed. Otherwise, morale suffers. A remedied complaint system, as is described in Bill 4, if it hopes to be marketable to other police forces in Ontario, should have as its main objective the fostering of closer co-operation between the police and the public.

I would ask you to reflect on the words expressed by Arthur Maloney on page 207 of his report, the Metropolitan Toronto Review of Citizen-Police Complaint Procedure, wherein he stated: "What I had in mind as I formulated my recommendations was that the public feel satisfied that the complaints of citizens were openly, fairly and effectively dealt with and that the police officer should be satisfied that he too was being dealt with fairly. Also I was determined that the police officer should not feel constrained in the performance of his duties in matters of violation of the law or in a potentially dangerous encounter with some suspect for fear that he would be

second-guessed later in the complaint department."

I believe the Metropolitan Toronto Police Force Complaints Act, 1984, goes a long way towards accomplishing what Mr Maloney advocated. However, having experienced this legislation for the last eight years I, on behalf of the chief and the management of the Metropolitan Toronto Police Force, firmly believe that if the government of this province is serious about making the complaints system acceptable to the members of our force or any other police force in Ontario, there remains room for improvement to the act.

I respectfully submit to you that the present system may not be acceptable to many other police forces in Ontario because of the perceived deficiencies and inequalities that still need to be addressed. I submit to you that the present system still lacks credibility in the police community. Many police managers believe that there is still a more satisfactory and acceptable complaint review system floating out there that has not been presented to all parties as yet.

In conclusion, I just wish to remind you that as long as policing is done by human beings dealing with other human beings, perfection will never be achieved. But if you, the representatives of the Legislature, want to ensure that Bill 4 meets the needs of both the police and the community in an acceptable fashion, I urge you to give careful consideration to the shortfalls of the present act, which we will now present to you, or in the alternative, ask yourself whether there is some other complaint system out there that would best meet these needs and that would likely be welcome by the police community across Ontario.

After all, is it not the underlying thrust behind Bill 4 to foster province-wide acceptance of a complaint review system that will be received and accepted by most, if not all, communities in the future?

I thank you for your attention to my introduction, Mr Chairman, ladies and gentlemen. I would like now to turn over the presentation to my colleague, legal adviser, Mr Rusty Beauchesne, who will now get into the actual specific recommendations that the Metropolitan Toronto Police Force is putting forward to improve the complaint act.

Mr Beauchesne: Mr Chairman, thank you. It is always a pleasure to address this committee. Today I would like to address six or seven concerns of the Metropolitan Toronto Police Force in relation to Bill 4.

1. The voluntary opting-in provision: This is presently found in section 2a of the act, and provides that councils of municipalities could, at their discretion at some time in the future, pass a bylaw whereby they would voluntarily accede to the provisions of the said act and therefore place the police officers within their jurisdiction within the confines of the act.

The Metropolitan Toronto Police Force has always maintained and continues to uphold that it is inherently unfair, if not perhaps illegal by virtue of the equality provisions in section 15 of the Charter of Rights and Freedoms, for the government of this province to legislate a citizens's complaint system which applies only to the officers of the Metropolitan Toronto Police Force.

I submit to you it is absurd to think that the conduct of an officer in Metropolitan Toronto is subject to the ramifications of the act while the same conduct by an officer of Peel Regional Police, York Regional Police and Durham

Regional Police, just on the other side of the boundaries of Metropolitan Toronto, be it Steeles Avenue or Brown's Line, in some cases on the other side of the street, as I was just mentioning, are not subject to the scrutiny and sanctions of the act. The same applies naturally to other police forces in Ontario.

Not only is this system unfair to the officers of the Metropolitan Toronto Police Force, but it could be said that it is not fair to the citizens in these other jurisdictions who do not enjoy the same rights and privileges to lodge a complaint, as do their neighbours in Metropolitan Toronto.

Originally, the first act to come out of the Legislature dealing with this issue was called the Metropolitan Police Force Complaints Project Act, 1981. We submit to you that the incorporation of the word "Project" in that act was done deliberately with the intention of some day having the word removed so that if it proved successful, it could apply to the whole of Ontario.

If the government today is prepared to deal seriously with the issue of police/community relations, then we submit that the proviso for opting-in must be removed and made mandatory. This Legislature should not be selective about who will be covered, who will have an option to complain and who will have an option to have a complaint investigated promptly.

We submit to you that this is a serious flaw in the bill before you and that management and members of the Metropolitan Toronto Police Force cannot support such an amendment.

2. The right of a police officer to a private life: A police officer should have the same rights as any other person to lead a normal life when not on duty. His personal affairs should not be the subject of complaints under a statute of this kind.

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This is not to say, however, that the off-duty conduct of police officers should never be the subject of disciplinary action. Rather, the submission is that, unless the conduct is police-related in some sense, it should be a matter of internal discipline and not part of a public complaint system.

However, as the act presently reads, it has the effect that anything which a police officer does, whether off duty or on duty, could form the basis of a complaint and is required to be processed through all the phases of the act, possibly up to and including a hearing, if the allegation, however absurd, could theoretically be construed as an allegation of improper conduct even in the slightest degree.

For example, in 1987 the Divisional Court ruled that an off-duty incident involving two vacationing Metropolitan Toronto police officers who were visiting a friend's summer cottage, over 100 miles away from Toronto, could be the subject of a complaint under this act as presently worded. I stress that: as presently worded.

In that incident the officers were not wearing police uniforms or any insignia, badges, warrant cards or anything which would identify them as police officers or connect them with the Metropolitan Toronto Police Force. They did not at any time in the course of the altercation identify themselves

nor were they identified by anyone else as members of this force. They were complete strangers to the complainant, who had never had any previous dealings with them. In fact, the complainant had no idea until some time after the incident that these two men were Metropolitan Toronto police officers. He learned this indirectly later on. Lastly, no other persons than the complainant, the two officers and their host were present so that no other members of the public saw or observed the incident.

I submit to you that this is not fair. It means that an off-duty police officer of the Metropolitan Toronto Police Force, if he or she gets into an argument at home with a neighbour, or if, when out shopping or on a social occasion, he or she has a dispute with some other person which has nothing to do with his job or function as a police officer, he may subsequently find himself the subject of a complaint under this act if that other party knows beforehand or finds out subsequently that he is in fact a police officer on the Metropolitan Toronto Police Force.

Even domestic disputes involving family members can, by the present definition of a complaint in this statute as judicially interpreted, be treated as complaints. Bearing in mind the serious consequences to a police officer of the complaint process, the recognition of this factor is important.

It is submitted that the complaints act was never intended to apply to the private lives of police officers. Rather, it was intended to govern their conduct while acting or purporting to be acting in their official capacity as police officers when dealing with the public.

In fact, I personally researched in the library of this House the Hansards dealing with all these others acts the deputy mentioned beforehand and in no instance did I find any discussion in the House of this type of legislation applying to off-duty conduct.

Further, I point out that police complaint legislation in other jurisdictions fully recognizes this right to privacy.

For example, the Parliament of Canada, in its amendment to the Royal Canadian Mounted Police Act of 1986, created in part VII of that act a system of public complaints against members of the RCMP force. However, such complaints are limited to matters "concerning the conduct in the performance of any duty or function under this act of any member or other person appointed or employed under the authority of this act...." The cite is there for you.

In Manitoba, the Law Enforcement Review Act defines a complaint by reference to "acts or omissions arising out of or in the execution of his duties."

It is a distortion, almost a perversion, of the intent of the Legislature to make the system of public police complaints serve the purpose of what amounts to an inquisition into every aspect of a police officer's private and personal affairs.

The proposed amendment, I submit to you, would take the form of a modification of the definition of the word "misconduct" as it appears presently in the statute by some language such as the following—and you have in front of you the definition of "misconduct" as it presently stands with the new words "in the performance or purported performance of any police duty or function" highlighted.

3. Restriction of evidence admissible at hearings: In its present form, the complaints act is largely silent as to what kind of evidence may be admitted at hearings. The only specific matters dealing with these are contained in subsections 23(13) and (14). The first of these states that police officers are not required to give evidence at such proceedings, and the second makes statements or admissions made by any of the parties during attempts at informal resolution of a complaint prior to the hearing inadmissible.

In the absence of any other specific direction, therefore, hearing boards have applied certain provisions of the Statutory Powers Procedure Act, notably section 15, to admit as evidence material that would never be allowed in a criminal prosecution. Specifically, hearsay, unproven documents, similar fact evidence and nonexpert opinion evidence can be received in evidence.

It is submitted that this practice is entirely inconsistent with subsection 23(15) of the statute which provides as follows:

"(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt."

In thus importing the criminal standard of proof into such proceedings, the Legislature was thereby fulfilling both the recommendations of the inquiry commissioner, the late Arthur Maloney, in his report of May 1975 and the representations made by the Attorney General in the House at the time the bill was first introduced to the effect that no allegation by a citizen against the police officer would be found to be established unless proven beyond a reasonable doubt.

It is not going too far to say that the co-operation of the police force was originally sought and obtained on this representation that the proceedings under this act would be as much as possible analogous to a criminal trial. In not opposing the statute from the outset and in agreeing to make a sincere and vigorous attempt to carry out its provisions both in spirit and letter, the members of this force, some years ago, were given to understand by legislative authority that their rights would be protected.

It is submitted, however, that the admission of material which would not be allowed in a criminal prosecution results in some cases in convictions of complaints which would never occur in a criminal prosecution because the evidence which has been received and considered by the tribunal is not evidence which would have been received and considered in a criminal court.

Possibly this factor more than any others is reflected in the feeling of frustration and rejection of the current complaints procedures manifested recently by members of the Metropolitan Toronto Police Association in protesting against the system.

Mr Maloney in his 1975 report foresaw the problem which could occur with civilian review boards and made this comment at page 194:

"First, as a result of my investigations, it is my conclusion that a civilian review board would add to but would not reduce tension between the police and the public. I say this because of the likelihood that such a board would spend so large a portion of its time hearing the allegations of citizens against police officers that it would then assume an adversarial character which would inevitably contribute to an atmosphere of confrontation, the beginnings of which have been increasingly discernible between the police and some segments of society."

It is also appropriate in this instance to consider the parallel with the RCMP complaints and disciplinary procedures.

Being an Ontario statute, the Statutory Powers Procedure Act does not of course apply to procedures under the RCMP statute, which is a federal statute. None of the provisions of the 1986 amendments speak directly to the issue of what evidence may be heard at complaints hearings except that section 45.45(8) excludes privileged information and certain other evidence not germane to this discussion.

In fact, through speaking with Judge René Marin, who is the chairman of the RCMP external review committee, we have learned that he applies the same standard in evidentiary rules pertaining to such complaint hearings as are applicable under criminal proceedings in the courts.

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Returning to the Metropolitan Toronto Police Force Complaints Act itself, it is submitted that if the proceedings are really to fulfil the statutory requirement that complaints must be proven beyond a reasonable doubt in the same way as a criminal charge is, this carries with it the implied requirement that in other respects, and in particular with respect to the evidence upon which a tribunal may act, the criminal standard of what constitutes admissible evidence should likewise be imposed.

It is respectfully submitted, therefore, that this reasonable objective could best be achieved by some such amendment to subsection 23(15) as the following, and I draw your attention specifically to clause (ii):

"(i) no findings of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt;

"(ii) notwithstanding the provisions of section 15 of the Statutory Powers Procedure Act, a board of inquiry shall not receive in evidence anything which would not be admissible as evidence at a criminal trial."

4. Right of the chief of police to have input in the determination of penalty: The present statute permits a complaint board tribunal not only to determine the guilt or innocence of the accused officer but also gives it the sole and exclusive right to determine the appropriate penalty, subject only to appeal rights to the courts. The chief of police has no input in the matter of penalty and is obliged simply to carry out whatever penalty the board of inquiry sees fit to impose.

In this respect, the procedure is unique in North America, as far as we know. In every other case, either the chief determines the penalty with the inquiry board or equivalent making, at most, recommendations in that regard, or the chief must be consulted and render his opinion to the inquiry board as to what penalty is appropriate.

The problems the present provisions give rise to are twofold.

First, it unduly erodes the authority of the chief of police in matters of discipline. In the end, a chief of police, if he is to take responsibility for the efficient operation of the police force and the good conduct of its members, must have the opportunity to express his opinions and concerns over what discipline is to be meted out for particular offences. It is an implicit part of any managerial or command function.

To analogize to the private sector, one cannot conceive of a situation in which the chief executive or managing director of a firm did not make the decision as to whether an employee was to be dismissed or otherwise disciplined. Even where there is a collective agreement with grievance procedures, the head of the organization makes the decision in the first place, subject to grievance procedures.

In his 1975 report, Mr Maloney, again at page 210, recognized the validity of this position, stating as follows:

"While my recommendations envisage substantial changes in the complaint procedure, there is one aspect which I feel must remain intact. That is the responsibility of the chief of police for assigning penalties or imposing discipline. There should be a consistency of discipline between matters arising from the citizen complaints and offences of an internal nature. In addition, discipline is an important component of the administration of a force and must be handled within the context of the command structure. This responsibility has been appropriately shouldered by chiefs of police in Metropolitan Toronto, and I have every confidence that this will continue to be the case. Accordingly, I am recommending penalties for all established complaints be assigned by the chief of police."

The brief quotes for you the formal recommendation of Mr Maloney as it was drafted in his report in recommendation 43. Again, comparison with the Manitoba and RCMP statutes would be useful on this point.

As to the RCMP, at the conclusion of a hearing the complaints commission submits to the commissioner of the RCMP, who is the equivalent of a chief of police, and to the Solicitor General of Canada a report setting out such findings and recommendations with respect to the complaints as it sees fit. After that, the disposition of the complaint is left entirely in the hands of the commissioner. This would include any penalty to be imposed.

In Manitoba, the Law Enforcement Review Act provides that upon a finding of default by a board at a hearing of a complaint, the complaints commissioner consults with the chief of police of the force involved to determine his opinion with respect to the severity of the alleged default and the contents of the officer's service record. The commissioner then recommends an appropriate penalty based solely on these two factors.

Subsection 28(2) of the Manitoba act states that prior to ordering any penalty, the law enforcement review board must receive from the commissioner and examine his written statement and may then order the penalty recommended by the commissioner or, in its discretion, a lesser penalty. At this point, the chief of the police force involved shall impose a penalty subject to the provision of the act.

Thus, although the Manitoba legislation does not go as far as the RCMP act in terms of leaving the imposition of a penalty and determination of it solely to the discretion of the chief of police, it at least allows the chief to have some input in the matter of penalty.

A civilian complaint board is at a considerable disadvantage in this respect. Its members have no experience with police problems in the administration of a police force and normally sit on a single, isolated case after which the panel is dissolved. Its members may never sit on another hearing. An analogy occurs to me, that of appointing a judge to try a particular criminal case and determining the penalty in the event of a

conviction without his being apprised of the penalty normally imposed and considered appropriate by other courts for particular offences.

The second objection, which is related to the first, involves the elements of inconsistency and uncertainty of discipline. For instance, an officer might be charged with an internal disciplinary offence involving the use of excessive force on a prisoner as a result of investigation by his superior officers. The victim in this case may not have launched a complaint.

The trials officer hearing the charge, on the basis of what is ordinarily done in such circumstances and also taking into account mitigating factors such as the record of the accused officer and the conduct of the victim, might determine that the appropriate penalty would be one of demotion of rank for a limited period of time.

The same circumstances, if proceedings were initiated as a result of a complaint rather than an internal disciplinary charge, may result in the inquiry board's either imposing a penalty that is too light in comparison with what is normally imposed, or one that is too heavy in terms of such comparison.

Thus, a police officer is rendered subject to uncertain and unpredictable sanctions for certain conduct depending upon the whims and views of the particular tribunal that considers the matter. It would be far preferable that, prior to the penalty's being imposed, the chief or his designate have some input on the appropriate range of penalties.

An additional reason may be considered to support amendment in this regard.

Under the present provisions of the act where the inquiry board imposes the penalty, there is nothing in law which prevents the chief from immediately recommending the officer for reappointment to the police force if the inquiry board has ordered him to be dismissed and the chief considers this a harsh and unjust punishment. Technically, nothing in the act, as far as I can see, as it presently stands, prevents the chief from doing so.

However, if the chief himself had participated in the penalty process and had agreed that the officer should be dismissed in the circumstances, the possibility of reinstatement, thus frustrating the objective of the statute, would be eliminated.

Accordingly, we recommend that the complaints act be amended by deleting the present subsections 23(16) and (17) and substituting in their place provisions, the effect of which would be that, upon a complaint board finding an officer guilty of misconduct, the case would be referred to the chief of police or his designate, who may then make a written or oral submission as to the proper penalty in the circumstances.

5. The need for a limitation period for complaints: At present there is no limit under the complaints act or other legislation on the time in which a complaint may be lodged. As a result, a further abuse has occurred in that complaints are now being lodged far in excess of any reasonable period of time, in some cases more than a year after the incident allegedly occurred. Recently, for example, a complaint based on an incident which occurred in 1984 was lodged, and now it is almost four years since the events giving rise to the complaint.

Undue delays in reporting complaints create considerable hardship for

officers. Witnesses become difficult to locate and the personal recollections of all concerned become clouded with the passage of time. Furthermore, evidence may no longer be available. If there is no reason to set aside internal police documentation, much of it is routinely destroyed under our records retention schedules.

In other fields, the Legislature has seen fit to impose limitation periods for the commencement of proceedings. Thus, the Provincial Offences Act requires that proceedings by way of summons be commenced within six months of the alleged offence. This would seem an appropriate limitation period, bearing in mind that out of this act, complaints are made analogous to criminal proceedings in respect to the burden of proof.

1440

Certainly, some reasonable limitation should be imposed. In the case of motor vehicle accidents, the limitation period under the Highway Traffic Act for the bringing of normal actions for damages is two years. The Public Authorities Protection Act provides for a six-month limitation period.

One occasionally hears the comment that any delay in laying a complaint does not create any injustice to police officers because they have notebooks which can be referred to. However, it must always be kept in mind that notebooks are not prepared for the purpose of recording events which may be important in the defence of a complaint. What is included in a police officer's notebook is material that may be relevant to the prosecution of a criminal charge against another person. Thus, the fact that there are notebooks is no guarantee that a police officer will not be adversely affected by delay in the making of a complaint.

The Canadian Charter of Rights and Freedoms confers the right on any person charged with an offence to be informed without unreasonable delay of the specific offence and to be tried within a reasonable time. Though I admit it is true that these provisions are not applicable to proceedings of this nature, which are civil rather than criminal or penal, nevertheless it is submitted that it would be fair to impose a reasonable limit of time for the lodging of complaints.

Subsection 6(3) of the Manitoba Law Enforcement Review Act requires ordinarily that complainants must submit any complaint in writing with particulars thereof, not later than 30 days after the date of the matter giving rise to the complaint. It is true that the complaints commissioner under that act may extend this time up to a period of a year in certain circumstances, but there is at least some limitation with respect to the time for bringing the complaints.

The chief would prefer a simple amendment to this act that the provisions of the Public Authorities Protection Act apply to complaints against police officers. As I have mentioned before, that is a six-month limitation. As an alternative, when more than six months have elapsed since the events which form the subject of a complaint, such complaint should not be received unless the complainant can demonstrate extenuating circumstances for the delay.

6. The need for a statutory decision of "exonerated": Presently, when the investigation of a complaint discloses that an officer acted properly and in accordance with all statutes and regulations, the disposition of the complaint is recorded as "No further action warranted." This phrase is

somewhat ambiguous. It might suggest that the complainant has simply withdrawn his complaint or has moved away or cannot be located or perhaps has died. It might or might not reflect the reality of the outcome nor the vindication of the officer's conduct.

The disposition at present leaves the impression that the complaint may have had some justification, but that the matter is not significant enough or the evidence is not strong enough to establish guilt. This leaves a bad taste in the mouth of the officer, in that he and others are left with the impression that he did something wrong which provoked the complaint. In fact, such as in cases where the officer issued a tag or a summons, the officer merely performed his assigned duties without breaching any regulation or rule of conduct.

In contrast, the word "exonerated" connotes that the complaint was found to be lacking in merit and/or credibility. Surely, it is appropriate in those cases that the officer who has been slandered as a result of an unjust accusation should in the end receive some recognition that his conduct on this occasion was determined to have been proper.

Often the public reads sensational headlines on the front page of our local newspapers, but the denial and the ultimate findings are too often relegated to the back pages, if mentioned at all. Should not this aggrieved officer at least receive the consolation of having been exonerated of any wrongdoing?

Allegations made in the course of a complaint procedure, however outrageous and unfounded and highly publicized, arising in the course of a complaint board hearing are likely immune from an action for defamation. As such, since there are cases where the slander at the outset can never be fully righted, I respectfully submit that the least that the officer should expect is for the record to show that he was exonerated.

7. Costs: The complaint system which you are trying to sell to other police forces in Ontario may not be received with open arms, not only because of the perceived deficiencies and inequalities that still need to be addressed, but more so because of its demands on police manpower and its financial implications.

For example, there were 692 complaints lodged in Metropolitan Toronto during 1988. The force's public complaints investigation bureau had a staff of 23 officers and a budget of \$1.4 million last year. We understand that Mr Lewis's office had a budget of \$1.2 million during the same period of time. If one was to average the cost, one finds that each complaint investigated last year in Metropolitan Toronto cost the taxpayers an average of \$3,757.

Furthermore, this figure does not take into account the right, as per the force's collective agreement and the act, of an officer who is eventually acquitted of a complaint to be indemnified by the force for his legal costs. For example, the legal costs incurred at a recent hearing in a complaint against three police officers totalled \$100,000.

I read this morning in the paper that Art Lymer made the comment that in the last two years, the police association spent \$800,000 on the defence of police officers before complaints hearings. In that context, one has to remember that approximately 95 per cent of complaints are eventually unsubstantiated or withdrawn or there is no action taken.

Therefore, I respectfully submit that smaller police forces and municipalities with much smaller police budgets may not be in a position to absorb such an expense without drastically affecting the service they presently provide to their community.

Mr P. Scott: I have a conclusion, if I may.

In respect of the entire act at its present stage of development, the comments of Sidney Linden, the previous complaints commissioner, in his second annual report are apt:

"To maintain an effective complaint system, there are three major areas that must receive ongoing attention. First, the system must be credible. It must not only be, but must be seen to be fair, equitable and trustworthy to both complainants and police officers. It must provide members of the public with an effective avenue for redress of legitimate grievances against law enforcement officers and by the same token, ensure that the rights of an accused officer are protected.

"Secondly, the system must be visible. There must be efforts directed to making people aware of the existence of the system and of their rights under it. Finally, the system must be accessible. It must be kept as uncomplicated and understandable to the participants as possible."

Whereas the second and third requirements listed by Mr Linden have been met, it is respectfully submitted to this committee that from the point of view of the ordinary police officer who patrols your street every day, the credibility, fairness, equity and trustworthiness of the system is very much in issue at present. Specifically, the perception is that the rights of an accused officer are not properly protected and the system is not seen as fair, equitable and trustworthy with respect to a police officer.

I wish to emphasize that while I do not share all of the objections and criticisms of the system that have been directed at it by the police association, I and all other senior officers of this force agree that the system does need amendments and changes along the lines I have recommended herein. Otherwise, the act will continue to be a factor in the poor morale among the rank and file that our police force is presently experiencing.

The real danger is that members of the force may become so unduly sensitive and fearful of the perceived unfairness of the complaints system that they will become more concerned with protecting themselves from complaints, no matter how ill-founded, than from carrying out their proper duties as police officers.

We have to remember that unlike members of other professions, police officers by the very nature of their work are particularly vulnerable to public complaints. Law enforcement officers must of necessity from time to time use force and they must make arrests and institute charges. If he or she is to carry out his or her duties effectively and efficiently, it is inevitable that a police officer will from time to time incur the displeasure of those against whom he is obliged to enforce the law. I would point out that 60 per cent of our complaints originate from charges being laid.

However, an officer will be deterred and discouraged from carrying out his duties properly if, in his perception, in doing so he runs a serious risk of being penalized by a system of civilian complaint review that does not fully and adequately take into account the problems of police officers. Many

complainants are simply venting their annoyance and frustration with the criminal law against those who have to enforce that law, and therefore the evidence of such complaints should be discounted accordingly unless corroborated by independent evidence.

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Unfortunately, the results of a complaint system too heavily weighted against police officers is that it affects not only the police officers themselves, but individually every one of us and ultimately the safety of the community at large by reducing the efficiency of law enforcement.

In conclusion, I would like to say that the present act is working reasonably well. The relationships between the executive of the Metropolitan Toronto Police Force and the public complaints commissioner and his staff is good. We have a distant, arm's-length, professional relationship that I believe is appropriate under the circumstances. I think that on several of the recommendations, the public complaints commissioner will support my approach.

Therefore, I strongly urge you to give serious consideration to our submissions and these minor amendments to the act, which I believe will make it work more efficiently and seek the goal of being as near perfect as possible. We look forward to seeing them implemented as appropriate amendments to the present statute. Mr Chairman, members, I thank you for your attention.

Mr J. M. Johnson: I have three or four points I would like to make. Basically, I support your presentation. The right of a police officer to a private life, I certainly support. It goes without explanation as to the rationale of it and they certainly are entitled to it.

The right of a chief of police to have input in the determination of a penalty creates a problem for some. I would question whether the police chief should have the right to set the penalty, but I certainly concur that he should be consulted. I find that the Manitoba Law Enforcement Review Act clearly—I would think it is clear for both sides. To me, it would make a lot of sense to at least take a look at it.

I very strongly support your suggestion in proposal 6, the "Need of a Statutory Decision of 'Exonerated.'" I think it is very unfair that a police officer should have to carry around the burden that he perhaps was guilty of an offence they could not prove. It seems to me that in court cases you are either guilty or innocent. There is not the third option that you are possibly guilty but we could not substantiate the case, I would certainly support your presentation. I think there are a couple of other different groups that have made the same proposal that if an officer is not guilty, then he certainly should not have to carry that burden of guilt.

I think those are the three comments I would like to make.

Mr McGuinty: My colleagues are going to find this a little tiresome because I think I have raised it in the context of every presentation. I am from Ottawa-Carleton. That is east of Toronto. You go down Highway 401—

The Chairman: Where is it in relation to Ajax?

Mr McGuinty: It is past Ajax. There is life after Ajax. I was talking with one of my colleagues this morning from Metro and he asked me where Brockville is.

Anyway, I have dealt with my local police forces in a number of capacities and have many friends there and on the police commission and so forth. To the best of my knowledge, we have a system there of handling complaints that is effective, satisfactory and very acceptable to the force itself and to the community.

We find it a bit presumptuous for people from Toronto, be they policemen or otherwise, to assume that this procedure, which is found to be desirable and workable in this area, should be imposed in other regions. I can think of the analogy of Sunday shopping, which was made a matter of local option. That was done, I think, with good logic because the character of various municipalities differs. The local politicians are more tuned into that and more sympathetic and aware of it and responsive to it.

I cannot see the kind of machinery you envision here being applied, for example, in my home town of Osceola, which has 28 people, at least on a Saturday night, and no police force, or even in Pembroke, which probably has half a dozen policemen.

I think, Rusty, the analogy you give here—you cite Peel regional, York regional and Durham regional, and the implicit inconsistency that would be involved here if this were imposed upon the Toronto people and not applied in that area. I think that certainly is kind of convincing. But really this business of having it mandatory throughout the province, why should we or others feel obliged to conform with Metro?

I do not know how in the hell we ever got into this can of worms, this administrative nightmare anyway, but the kind of administrative machinery, checks and balances that are found to be appropriate and perhaps necessary in Metro by virtue of its population, its rapid growth and its multicultural dimension, which is somewhat unique in Ontario, really is not necessary elsewhere. I do not understand why you would be so concerned about it.

Mr Beauchesne: If I could just make one comment in regard to that statement, I think what we are saying is that if it is going to apply to one police officer in Ontario, it should apply to all police officers. Either it does not apply to anybody or it applies to everybody. We did make some submissions as to why it may not sell with smaller communities like yours, especially in relation to the costs involved and the other impediments that may come in.

The reference to Durham and Peel is basically there to show that we have boundaries such as, as I mentioned, Steeles Avenue. If you are stopped on the one side of Steeles Avenue, being the south side, by an officer and you go on to complain against him or his conduct, you can do so, in fact, but yet if you are stopped on the north side, which is the York regional jurisdiction, you have no recourse. We find that a little hard to accept.

Mr P. Scott: In answer to your question, I believe one fundamental reason is that we have legislation now that says you cannot be treated differently because of your race, your colour or your creed, but really this legislation adds one thing to that. It adds that we, the Metropolitan Toronto Police Force, will be treated differently because of our occupation and the location, and basically it is unfair. That is a seat behind. It is unfair.

Mr Epp: I am just wondering whether I could have a supplementary of that particular point.

The Chairman: All right.

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Mr Epp: With regard to that, you mentioned on page 1, I guess it is, in the middle, that you think it is unconstitutional. Have you had a constitutional interpretation of that or is it just somebody's—not a constitutional interpretation, but have you asked a constitutional lawyer to investigate whether it actually is unconstitutional to have a complaints bureau in Metropolitan Toronto but not in other parts? You imply that, because you say it may be contrary to the charter.

Mr Beauchesne: I just state that as a statement, as such. I have heard of instances where this was perhaps going to be attempted by the police association. The defence worked through their counsel, who defends the officer in front of the hearing, but I do not know if it has been raised at a hearing. Maybe Mr Singleton could tell us if he knows of that.

Hon Mr Scott: It was raised in a case on appeal from the Police Complaints Board that went to the Divisional Court, the Weller case. That case did not go to appeal, as I understand it, because leave was refused. I think what you can say is that the police association will win the next round.

Mr Beauchesne: Will win?

Hon Mr Scott: I have the decision here. The Divisional Court of the Supreme Court of Ontario found that there was no disadvantage. It is a discrimination or disadvantage that you have to show under section 15, and they found in the Weller case that there was no disadvantage. That point was argued.

To the credit of the police association, while it lost the point at stage 1—when I used to act for it, I always said, "Well, if we got a chance to appeal, we would have done better on that point." The problem was that the Court of Appeal did not grant leave to appeal. I think the strong point is that next time it will be different.

Mr Beauchesne: I will take your word for that.

Mr Hampton: I wanted to ask you just briefly about the one system for the whole province, a consistent police complaints method for the whole province. You have outlined in the beginning of your brief your point of view that there should be some consistent system for the province. However, you point out the cost factor at the end of your brief. Does the cost factor necessarily get in the way of having a consistent system across the province? Is the cost factor prohibitive? Is that what is holding this up? What is the problem?

Mr P. Scott: At the present time, I have 23 top-notch investigators, either sergeants or staff sergeants. They are criminal investigators. Because of the nature and quality of what they do, ie, a man's occupation may depend upon it, they are my best investigators and they are dedicated to that. As a police officer who has the peace of the community at heart, I would like to see those 23 investigators dedicated to field police work.

As to the cost there, I have \$1.4 million. My budget estimate is probably \$1.5 million or \$1.6 million towards supporting this system, so I would suggest to you that in our budget, which is in excess of \$400 million, it is only a small percentage, but when you come down to a small police department it will become a significant and a large consideration, I would believe.

Mr Hampton: What would you recommend then? What is the way to go on this? If you believe in the principle of a consistent system of police review or police complaints system across the province, how should it be administered? How should it be financed?

Mr P. Scott: I believe most of the boards of commissioners of police or the police governing authorities are the independent outside review people. Some of them are appointed; some of them are elected. They are concerned citizens. They volunteer their time. Mostly they are doing it in their free time.

I believe there is your outside investigation. I believe the investigation should be done internally, a report or an appeal go through to the governing authority of that police force, either the police committee or the board of commissioners of police, and then an appeal process to either the Ontario Police Commission or Clare Lewis in the office of the public complaints commissioner.

But you have independent outside people who represent the community. Part of their obligation is the policy and the running of that police force. So I believe that is a process which would be appropriate and answers many of the needs of an outside investigation.

Mr Hampton: Does that answer the cost questions you raise?

Mr P. Scott: I think it would minimize it, but the costs will always be there, either directly or indirectly.

Mr Hampton: You state in your brief that the real issue as far as you are concerned is police-community relations. If I can refer to the introduction to your brief, you basically say that is the real concern; closer co-operation between the police and the public. You want a system that is credible in the police community and that would foster closer or better relations between the police and the community.

In terms of dealing with costs, do you think the system you have just outlined for me would meet the public's need? Would it satisfactorily address the public need in terms of police review?

Mr P. Scott: When you start looking at the public's need, you have to put it in perspective. For instance, we will get approximately 800 complaints against police officers this year, slightly higher than last year. We know, in terms of enforcement, of stopping people on the street and going to domestics, we will make well over eight million contacts with the public this year. So it would appear that for every one police complaint, there are approximately 10,000 contacts with the public, which is a fairly enviable record; it is a great record. Therefore, when you start looking at the number of complaints, I think the number of complaints in small areas would be less than in Metropolitan Toronto.

Metro, because of the pace of life, because of traffic congestion, is where the action is. Nobody goes, with all due respect, to Ottawa or Ajax or Pickering to paint the town red. The protests against all of your government people are in Toronto. For instance, the Morgentaler Clinic now has cost us millions of dollars and numerous complaints because the policy is that they will lay complaints against police officers for arresting them, as part of their defence policy. We are in the middle, supporting the government of the day, irrespective of its political hue. We support the law of the day, but we are peacemakers out there and often in between.

When you talk about community-based relationships, you have to remember that the credibility of this act with the individual officers and their supervisors on the street is critical. It does not matter what we around here decide if it has no effect on the police officers on the street. Therefore, the credibility of this act is very critical to the police officers.

We have made six minor amendments to the act. That is not a lot. We are saying to you the rest of the act is working reasonably well. The relationship between us and the police commission is working well. Where this act fails and sort of breaks down the communication with the public and the police is that the average street policeman has not bought into it. He does not believe it is fair. It is one of the reasons we ask for the burden of proof to be the same as before the criminal courts.

Where did the policemen get their value systems from? They go and they place people before the criminal court and there is evidence before the criminal court. Then they say to us, "We are not getting the same rights as criminals." So we have to build the credibility up to make the act work reasonably well. It has all of the factors and features in there. We believe it needs the minor amendments that we are recommending.

I am not sure I answered your question.

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Mr Hampton: You answered around it. That is okay. I accept that this is not a simple problem we are dealing with and that there are many facets to it.

The Chairman: I am going to give you one more facet to examine and then we have to move on.

Mr Hampton: I think I should be allowed to take some of the Attorney General's time this afternoon and return the favour.

The Chairman: If you want to sit up here and he will sit back there.

Mr Hampton: I want to ask you again about this question of evidence. Looking at the way the system works now, it seems to me that once you have gone through the public complaints mechanism, you then have several other mechanisms that deal with discipline of an officer against whom a complaint has been brought and substantiated, I would guess. Is that not where a stricter level of proof and a higher level of evidence should apply? Does it necessary flow out of every time you have a police complaint investigation, every time a complaint is lodged, that an officer is going to be disciplined?

Mr P. Scott: No. In fact, it is the opposite.

Mr Hampton: Should we not be trying to separate police discipline from police complaints? It would seem to me what we want to get out of police complaints is community relations and some mechanism for people who feel they have been wrongly dealt with by the police to bring that complaint forward, and either have it found to be verified or not have it be verified, but at least have a workable process. It seems to me that what goes on after that in terms of police discipline should be kept separate and apart from police complaints.

Mr P. Scott: It is not. In fact, in my responsibility as a complaint

review officer I discipline and charge under the Police Act a fair number of police officers each year when the complaint originates from a public complaint. That is one of the recommendations and why we say the chief should be responsible. The chief is responsible for the good order and running of the force. I am acting as the chief when I deal with these complaints and charge the police officers.

Mr Hampton: But once a police complaint has been substantiated—let's assume that we go through the whole process and substantiate it—then the police discipline process takes over, does it not? In the police discipline process, does an officer not have the resources of the Police Association of Ontario behind him?

Mr P. Scott: Yes.

Mr Hampton: Does he not have rights of grievance?

Mr P. Scott: Yes.

Mr Hampton: Does he not have all of those protections that might fall to any other unionized employee in the province in terms of some protection of his employment rights?

Mr P. Scott: Yes, he has. But I should tell you that in spite of the fact he has been charged, under the Police Act, as the essence of this complaint, it becomes a separate part, the complaint system could take it on and you have a second trial on that.

Mr Hampton: Is that not something we should try to sort out?

Mr P. Scott: Yes.

Mr Hampton: I guess my point is that I see where there is some overlap between police complaints and police discipline. I really wonder if we should not be trying to move those a little further apart, if that can be done. Maybe I am just an idealist.

Mr P. Scott: I believe quite frankly that if he is dealt with under the Police Act itself on a complaint, it should be settled. The police have recognized the problem. They have charged the officer. He has been before the court. He has had a tribunal sit down and listen to the evidence. He has been represented by a lawyer and the disposition of that case should finish the complaint. That is it and it has been dealt with.

Hon Mr Scott: Deputy chief, is that in fact how it happens now?

Mr P. Scott: In most cases, yes.

Hon Mr Scott: As I understand it, if the chief or deputy chief decides to prosecute for the complaint of assault and the accused is acquitted of the assault, then there is no further need for the Police Complaints Board to intervene?

Mr P. Scott: That is not true.

Hon Mr Scott: I am sorry.

Mr P. Scott: You see, the assault normally ends up as the fact—and

in many cases it does—that there has been some type of dispute. The actual physical assault is the essence of the complaint, but the very fact that the police officer swore or, you know, there was punching and so forth, makes it that now you have two or three other elements.

Hon Mr Scott: The Police Complaints Board may consider whether there was verbal abuse, but once the court has decided, when you lay a charge, that there is no assault, there is no allegation of assault before the Police Complaints Board. There may be an allegation that the officer was rude or something, but the assault is removed.

Mr P. Scott: The circumstances surrounding that, naturally, have to be placed before them.

Hon Mr Scott: Yes, but if you had a simple allegation of assault, the complaint that is made to the Police Complaints Board is that the officer assaulted, period. If the police chief decides to lay a charge of assault against the officer in that case, and he is acquitted, on that example there is nothing left for the Police Complaints Board to deal with.

Mr P. Scott: That is right.

Hon Mr Scott: Yes.

Mr Hampton: Can I ask one simple, little question?

Hon Mr Scott: Yes, and take your time.

Mr Hampton: If we do not move to a uniform system that covers the whole province, if we go this municipal option route again, I have a suspicion that in the eyes of the citizen out there who may not understand all of the complications of this, the police forces and the policeman on the street may bear some of the criticism and local police departments may bear some of the criticism where you have in one municipality an operating police complaints system, but the other municipality has not opted in. I can think of all kinds of strange examples: what might happen in Kitchener-Waterloo and then what might happen in Brantford or in Hamilton, for example. How committed are you to a universal system or one that applies province-wide? You said it and I know the police association has said it, but what is the depth of your commitment to have one that applies across the province?

Mr P. Scott: I believe that while the Metropolitan Toronto Police Force is segregated from the other members of police forces right across this province and across Canada, we will always have a strong resentment and the ability of the complaints act to become credible with my supervisors and my people will be very difficult to maintain. That is how strong I believe that commitment is.

Mr Sterling: I take it your drive for the universality of this process comes from a labour relations point of view in terms of maintaining morale in the police force here in Metropolitan Toronto as your major concern. If you wanted to put it this way, our police in Metropolitan Toronto consider this process as misery. What you are saying to me or what I am reading from you is, "If you spread the misery all over Ontario, then our guys will accept it a little bit better." Am I taking that the right way?

Mr P. Scott: No. What we want is what most people want, and it is a basic human need to have equal treatment, to be treated no differently, no

better and no worse than anybody else. It is a basic philosophy behind many of our human rights laws and we are asking for the same thing. We do not believe that is so terrible or an exorbitant demand.

Mr Sterling: The majority of your 5,000-odd police here in Metropolitan Toronto, can I just ask you what would be the most numerous rank? Constable?

Mr P. Scott: Yes.

Mr Sterling: What does a constable get paid in Toronto?

Mr P. Scott: Right now, it is just slightly over \$45,000 a year for a first-class police officer.

Mr Sterling: If you go back to Prescott or Brockville or Kemptville or those areas which I have some familiarity with in eastern Ontario, I would say a constable would be paid somewhere between \$15,000 to \$20,000 less than that. Would that be correct?

Mr P. Scott: No. The average wage of a police constable is about \$4,000 or \$5,000 less than that in the smaller towns. You have to remember that they do not have to go out and pay at least \$250,000 for a little three-bedroom home. You have to remember too that this has been recognized by the Royal Canadian Mounted Police, who are now presently subsidizing housing costs for their people they transferred in the Toronto area to the tune of \$800 per month.

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Mr Sterling: I take issue with the amount you say the constables are getting paid in Prescott and in those other areas. I was wondering whether you are comparing apples and oranges in terms of the kind of commitment and so on. The average for all of Ontario may be \$5,000 less, but you are a pretty big force and you would drag that average up quite dramatically.

Mr Scott: There are 17,000 police officers in Ontario. Of the two major forces, we have 5,400. The Ontario Provincial Police are slightly over and they reverse the figures, about 4,500. So you are looking at 10,000 of those between the two of us. So the average would have to be fairly reasonably high between the two forces which are reasonably comparable. You are looking at Peel, Durham and the Golden Horseshoe area. Again, they are running from 800 to 400 police officers. So you are looking at a preponderance of it. Yes, you are right. You will find isolated pockets of small police forces that do really get paid a lesser wage.

Mr Sterling: When this original act was brought into place and I was around the government at that time, my understanding was that the great need for it in Metropolitan Toronto was dealing with racial tensions that were heating up in the community in Metropolitan Toronto at that point in history.

Those same factors do not exist in a lot of other communities in Ontario, except at maybe the annual meeting of the Alliance for the Preservation of English in Canada or something like that. But they do not normally exist in rural Ontario and I am saying to you, if we do get amendments to the Police Act, which I hope will come forward, the process that hopefully will be brought forward in that act which will permit greater public scrutiny of complaints against police might be more than adequate in dealing

with those other communities. That is perhaps why Mr McGuinty and I find it a little bit presumptuous of Toronto and the Toronto police, saying that this is needed everywhere in Ontario.

Mr Kanter: I want to start off just by commenting very generally on one of Mr Sterling's comments. It was my impression—perhaps a little surprisingly so—that both the Police Association of Ontario, I believe, which we heard yesterday, and the police department of Metropolitan Toronto, which we heard from today, both supported the concept of civilian review of police action throughout Ontario.

As I understood the brief today, just confining my remarks to today's deputation, it was as a positive contribution to policing to increase accountability. I think what they did and the advantage of their brief before us was to mention some specific details of how they thought it could be more credible from the point of view of their members, which is a perfectly legitimate and natural thing to do.

But I did not get the impression, if I may say, just the impression that I had, that this was something they did not like and were only accepting if everybody had to have it. I had the impression this is something they supported and I want to commend them for that. That was certainly the thrust of the brief that I read, at least as I understood it. This was something they supported and since they thought it was a good thing for Metro, they thought it was a good thing for everyone else as well. That was not the specific question I had for them, but I did want to respond to the tone of Mr Sterling's comment.

Mr Sterling: In other words, if you have one third of the members here in Toronto, what can you expect?

Mr Kanter: I think you could flip that around and say that you have two thirds of your membership outside of Toronto. It seems the police association, which I suspect represents the two thirds out of Toronto just as well as the one third in Toronto, has said it supported it. I think if you are doing a numbers game, it has support; if you are doing a principles game, which I think is the more important point here, the Police Association of Ontario said that in principle it supports the idea of civilian review.

I do have a specific question relating to the Metro situation and that deals with the question of time limits. It is a matter that came up this morning. I think Staff Sergeant Beauchesne heard the type of question I asked this morning.

You have spoken, for example, of time limits for a complaint being launched, from the time the action occurred to the complaint being launched. There was a case, the Ramsay case that was referred to, that related to the length of time between when a complaint was launched and the time a report was in the chief's hands and there was some criticism, quite frankly, of the Metro force in that particular case.

I am wondering if either Deputy Chief Scott or Staff Sergeant Beauchesne or the other representative might indicate whether there have been any changes in your procedure as a result of the Ramsay decision and whether you think it would be reasonable to have time limits for the chief in terms of the preparation of a final report or for a decision once the chief receives that final report.

Mr P. Scott: The Ramsay case dealt specifically with when the actual complainant in the case had laid a civil charge or civil action against members or the chief himself, and normally the chief is a joint tortfeasor in these issues and he is cited in all of the civil actions.

The criticism levelled against the chief at that time, I think, in fairness to my chief, was unjustified. Normally, it is the same as any other business occupation or business. You go to your legal advisers. You say: "This is what I am faced with. How do I deal with it?" He was acting on legal advice that he should not deal with it until the civil issue had been settled, so acting on the legal advice, it was not settled.

When the Ramsay case came down, I believe there were eight in the system that were in various stages of delay. Those eight were all cleaned up immediately. Correspondence passed between myself and the public complaints commissioner and they are being dealt with now as they come, irrespective of what civil action is being dealt with. That is the action that has been taken and has been going on since the Ramsay decision has come down.

Mr Kanter: I appreciate that you are now dealing with these cases in a somewhat different manner than before the case was decided. As a matter of principle, and in view of the fact that you have suggested time limits for when a complaint should be lodged after the event occurred, do you think there should be time limits in terms of the public's credibility? Should there be time limits on an investigation being done that gets into the chief's hands or on the time a chief has to consider what action he might recommend? This is an issue that came up this morning and we had some discussion on that this morning with the new commissioner.

Mr P. Scott: When you look at the overall figures of how long a complaint takes, you look at it with some concern.

Mr Kanter: About 190 days, I think.

Mr P. Scott: But when you boil it down, it works out to be, for us, about 120 working days for the average complaint. When we have an appeal and we have a prepared case—statements are taken and an investigation has been made—and we send it over to the public complaints commission because the person has asked for a review, it does it about 15 days sooner, and it has a prepared case. There is already the groundwork and the slogging work is done, so it would appear that there is a level.

If a case is simple, we can get it done quickly, but in most cases you have to go and get a statement, you need a signature, you have to contact a doctor. In many cases, it is advisable to do a complete and thorough investigation to wait until a criminal charge is before the courts, because that is the only opportunity you get to hear the witness under oath and the police officers under oath. Just to do a complete investigation and a thorough investigation, which is our mandate under the act, you have to wait until those criminal charges are heard. In 60 per cent of them there is some type of charge laid, and in many cases the delay is caused by the investigator doing a complete investigation.

Mr Kanter: I hear your answer that the public complaints commissioner is almost as bad as you are and I guess we will have a chance to ask him about that tomorrow.

Mr P. Scott: I was not citing that, they do a good investigation,

but I am saying that to do a complete, thorough investigation, time delays are quite normal.

Hon Mr Scott: I think one of the recommendations you make that is easiest to sympathize with directly is the assertion that a complaints board should not be looking at private conduct outside police duties or police acts. Having said that, however, you would recognize that under the code of offences, the chief or his designate can discipline in respect of an act that is likely to bring discredit upon the police force.

1530

Mr P. Scott: Yes.

Hon Mr Scott: That section has been there a long time, certainly since long before my time as a lawyer. Would that kind of language be satisfactory for you with respect to the complaints board, so the complaints board would have the same ambit of power as the chief does—"likely to bring discredit upon the reputation of the police force"?

Mr P. Scott: I do not believe so. I believe that the complaints act should explicitly place a police officer on duty. The police officer can place himself on duty verbally, by pulling a badge; so whether he says he is on duty or he actually places himself in a position where he is acting as a police officer, then I think the complaints act should sustain.

The problem you have with an act the same as that is that many of the things we require for that misconduct would be to prove that the public was aware or that the public was present. In this case, you have a complaint from the public, so the public has to be present.

Hon Mr Scott: But do I have it right that the chief can discipline for nonpolice activity, for private activity, as long as it brings discredit upon the police force?

Mr P. Scott: Yes.

Hon Mr Scott: I can understand an argument being made—I would not buy it—that the police chief should not have that power because it is a private matter. But he would say, and I would accept it, that no, it brings discredit on the police force and therefore he must have that power.

The problem I am sort of grappling with is that if you give him the power to deal with private conduct that reflects on a police force, why should the Police Complaints Board not have a parallel power? It is not as if nobody deals with their private conduct; the police chief does.

Mr Beauchesne: If I may, the Police Act deals with a quasi-employer/employee relationship, and I agree with you, that is where that comes in. Also, there are cases, and Wigglesworth is one of them, where the courts have come out and said that under the Police Act, whether it is off-duty conduct or not, the officer is answerable to his profession. But to go so far as to say that he has to go to a third body or another body now to answer for his off-duty conduct, I think that is a precedent that you find nowhere else in any profession, whether it be the medical profession or another.

Hon Mr Scott: Let me take this example. I am aware of the case, and

I am entirely with you with respect to the decided case. Let us assume you had a case in which an off-duty police officer, clearly off-duty, made racist remarks in a public place in the course of some meeting or something. The force would be unhappy with that because the force has made very determined efforts, as I am aware, to deal with those difficult kinds of problems.

If a complaint was made about that by a citizen, I have no doubts that the chief would take it up and deal with it under disorderly conduct. He would be able to deal with it even though the officer was off duty and even though it was private conduct. If the chief did not deal with it, why is it that the Police Complaints Board, which only triggers in when the chief decides not to discipline, should not be able to deal with it?

Mr Beauchesne: I think the experience in Ontario has demonstrated that invariably in all instances the chief will take action and he has to answer to his board—

Hon Mr Scott: I agree with that, and that can certainly happen in Metro.

Mr Beauchesne: I do not think you will find that situation where the complaints board will have to come in, because it is done routinely.

Hon Mr Scott: I know the Metro force, and I know that the chiefs I have known in Metro would act under the code of offences, but the point you are making to us is that we have to have a province-wide system. I am not as familiar with all the other police forces out there and I say, when a chief does not act, if there is such a case, why should the complaints board not act?

Mr Beauchesne: I guess we could go ad infinitum with these matters in saying if one board does not act and the next board does not act. Again I draw the analogy to the medical profession. If the College of Physicians and Surgeons of Ontario does not take action against a particular physician, that is where it ends. I think we should not be any different.

Mr P. Scott: Surely the process of appealing to the board of commissioners of police would take precedence where you have an outside review to indicate to the chief and draw the chief's attention to that matter.

Hon Mr Scott: The professional bodies, the doctors and the lawyers, do permit private complaints to be made leading to discipline if the conduct brings discredit upon the profession. I am just wondering, in a case where the chief decides not to deal with it, would extending that power to the board be something you could live with or not?

Mr P. Scott: The advantage they have is that they have professional people who live and breathe the profession sitting in adjudication on that case. In this case, you have outside members who are not aware of what the policeman's life is or what would be a discredit to the profession, in fact, their conception of it. Really, they have professional members. I believe that when you leave it under the Police Act, you have professional police officers viewing the conduct of a police officer who did not act professionally and their standard of conduct should be appropriate.

Hon Mr Scott: But you do not support the Police Association of Ontario's position that police officers should be on the board. They made a proposition yesterday that there should be police officers on the board. I was just noting that one of their recommendations that you do not adopt is that one.

Mr P. Scott: To answer your question, which you have changed—

Hon Mr Scott: No, no, I am responding to your suggestion.

Mr P. Scott: The question was, "Why would you leave it in the Police Act and take it away from the complaints act?" The reason is that it is a judgement of professional conduct. Who are the best people to judge professional conduct but those in the profession? Who judges the professional conduct of lawyers and doctors but members of their profession? They have one outside layperson who sits in to give them an outside body, but the preponderance of members on there are people in their profession. So it is appropriate.

Who sits and listens to that man's charge and makes an adjudication on it? It is a senior command police officer. He runs a trial, so there is fairness there. It regards professional conduct, held within professional confines, which I think is appropriate, rather than taking it to an outside body which has no idea of the appropriate professional conduct of a police officer, except what they have learned through experience or knowledge.

Hon Mr Scott: Do I take it from that that if the committee—perhaps it would be foolish—were going to give the Police Complaints Board the capacity to deal with the same kinds of conduct that the chief can deal with, it could really only do that if it saw to it that police officers were on the panel that would adjudicate?

Mr P. Scott: I think it would be a very wise move if they were dealing with those because naturally he would only be one member of a panel and he would be able to advise them about appropriate conduct, police policy, what it is like out there and what the perception is. I think as a resource person, it would advantageous.

The Chairman: We stand adjourned until two o'clock tomorrow afternoon.

The committee adjourned at 1540.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989

WEDNESDAY 30 AUGUST 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Kormos, Peter (Welland-Thorold NDP)

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Offer, Steven (Mississauga North L)

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Substitutions:

Curling, Alvin (Scarborough North L) for Mr Chiarelli

Epp, Herbert A. (Waterloo North L) for Mr Offer

Johnson, Jack (Wellington PC) for Mr Runciman

Clerk: Arnott, Douglas

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Office of the Public Complaints Commissioner:

Lewis, Clare, Public Complaints Commissioner

Singleton, Edward R., Chief Administrative Officer

From the Ministry of the Attorney General:

Scott, Hon Ian G., Attorney General (St. George-St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 30 August 1989

The committee met at 1413 in room 228.

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989
(continued)

Consideration of Bill 4, An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984.

The Acting Chairman (Mr Mahoney): I call to order the standing committee on administration of justice. Our chairman is delayed and has not arrived yet. My name is Steve Mahoney. We will convene the proceedings this afternoon.

We are considering Bill 4, An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984. Our one and only delegation today is from the office of the public complaints commissioner: Clare Lewis, the public complaints commissioner, and Edward Singleton, the chief administrative officer.

Welcome. I believe you have someone else with you whom you could perhaps introduce to the committee.

Mr Lewis: Yes.

The Acting Chairman: See, I do not miss too many tricks. I am on the ball today.

OFFICE OF PUBLIC COMPLAINTS COMMISSIONER

Mr Lewis: May I introduce Susan Watt of my office. She is the legal director, late of the Ministry of the Solicitor General and very experienced in policing matters. She has been with us for some months and, in fact, was a staff member to the Race Relations and Policing Task Force during the currency of that particular event. I believe you have all met Mr Singleton in the past. He has been with you and I hope has been of assistance to you in your deliberations.

If I may, as public complaints commissioner for Metropolitan Toronto, I very much appreciate the invitation to appear before this committee today and hopefully be of some resource to you in questions which I am sure you have had raised. I have been the commissioner since October 1985, having resigned as a judge of the provincial court (criminal division) to become public complaints commissioner. Therefore, I am approaching the end of the fourth year of my five-year term.

It has been an eventful period, not without controversy. I just today had the opportunity to look at my passport photo which I had taken and to compare it with the photograph I had taken five years ago almost exactly, when I was a judge, and the ageing is apparent. I want to tell you that that period, none the less, has been one of great invigoration for me and I think it has been a very valuable one in the life of this community.

The Toronto complaints system is undoubtedly at the leading edge, the cutting edge, of civilian review mechanisms in the western world. I am in some position to know that as president of a group known as the International Association for Civilian Oversight of Law Enforcement, IACOLE. I will be ending my term at the end of September, but I am familiar with most of the American, Australian, British and Canadian review systems. There is no question that, internationally, the Toronto system is looked to as a model of such systems and attracts much interest as to its development and maturing.

That development has been one of some conflict, of which I am sure you are aware. I think I should, if I may, just give you a brief outline of my experience with it.

You will be aware that in the late 1970s, there was seen to be a very real need for an opening of the process for citizens in the city of Toronto to have an accountable method of their complaints against police, so that they could at least know that they were being examined and what, if anything, was done. Police themselves, at that time, were anxious to have a system which allowed for the rights of officers to be carefully and scrupulously preserved. The statute which was the result of that dynamic was the Metropolitan Police Force Complaints Projects Act, 1981. It was so named on the basis that it was felt that it should be seen if such a system could operate and function properly.

Accordingly, in December 1984, it was felt by the then government that the act had performed properly, and with some housekeeping amendments, mostly at the urging of the Metropolitan Toronto Police, the act was made into the act it is today, the 1984 complaints act.

When I came into office, and I was aware of this when I accepted the appointment, there was an issue of challenge about to occur. An officer on the police force had been found to have misconducted himself in a very serious manner by a civilian board of inquiry prior to my appointment. The penalty hearing on that matter occurred subsequent to my appointment and the board ordered that this officer resign or be dismissed within seven days. That case became the vehicle for the challenge by the Metropolitan Toronto Police Association to the legislation. It is the Weller case.

I might add at this point that you should be aware that the police association really had two concurrent challenges to discipline going at the same time: At the time they were challenging the public complaints process through the Weller case, they were challenging the internal police process through—I am sure you are aware of the case of Pugh and Trumbley. That is the case of sexual involvement by officers in an underground garage that has only latterly come to an end recently.

Concurrently, you had the association taking the position that internal police trials were not proper—they characterized them as kangaroo courts—and that the external trials through the public complaints act were not fair and were kangaroo courts.

They took the Pugh and Trumbley case right to the Supreme Court of Canada and the Weller case to the Court of Appeal for Ontario. In each case, it was found by the courts that the processes were appropriate in matters of professional discipline. Specifically, with the public complaints act, it was found by the Supreme Court of this province that the legislation was a statute that provided very real safeguards to officers while permitting citizens a means of redress, at least potential redress, and requiring the police to be accountable.

1420

The Police Association of Ontario, of course, went on with other strategies after having lost the matter in court but, notwithstanding that, the complaints process trudged on. I am of the view that that was an inevitable part of the maturation of the process. I could tell you that, again, internationally, any civilian complaints process that had a hope of being effective has been challenged by police associations, in some cases successfully. In Victoria and Queensland, Australia there have been successful challenges to what were seen as inadequate civilian review mechanisms.

In Cleveland recently the police failed in a challenge to the institution of a civilian review process, but the controversy we have seen is not unique. It is simply the Canadian version of resistance to what is, and I think it must be recognized, a very difficult matter for police to come to grips with.

My experience as public complaints commissioner has been that it is most important for a person charged with administering such a statute to have a certain degree of stoic resolve in the face of resistance but also to have restraint—I use that as a catchword, if you will—in the application of the act, because there is no question that civilian review is relatively new and has a tumultuous effect upon policemen who have not been used to incursion of civilians to this extent.

I think that their fears and concerns, while not always accurate, none the less have to be recognized and should be treated with respect. Accordingly, that is the approach that we attempt to take in our office sometimes, if I may say, with public criticism because of it. There are undoubtedly those who take the position that we are not sufficiently aggressive in addressing the powers of the act.

The operation of a civilian review statute at best is a balancing act and it is constantly subject to competing interests. I think it is none the less clear from the experience of the Toronto process that it has many very real advantages. While I know you have heard there are concerns of unfairness in the statute, I am prepared to say unequivocally that the statute is an exceedingly fair statute to officers.

If statistics prove anything, they prove that very few officers have been disciplined under this process. However, they also establish that the process has been opened and that when the police refuse or I refuse a complaint, there must be an explanation for it which can be accounted for to the person and it is in writing. So the whole thing is open and there is a paper trail.

There is one other thing the process has done and it has been very important. To some degree this is anecdotal, but I am not alone in the view. I have been in the criminal justice system in one way or another for about 24 years and still maintain discussions with members of the bar and the courts. I am of the view, with respect, that the act has contributed to an increased degree of professionalism in the Metropolitan Toronto Police Force.

I can say to you with some certainty that while the number of complaints remains approximately static from year to year with some variations, the gravity of those complaints appears to have been reduced markedly over the past several years. Deterrence is a value of this process.

When the system came into effect, there were some very debilitating

allegations being made about the Metropolitan Toronto Police Force. It was extremely difficult for the force to face them. There were allegations of tremendously excessive uses of force and so on. On the whole, and there are some exceptions, those egregious allegations are not being made today. They are much reduced and the police, with the general community, I believe, have experienced a great deal of equanimity that they did not previously have.

I might say that when I was on the task force, Maxwell Yalden, who is the chief commissioner of the Canadian Human Rights Commission, appeared in Ottawa and the statement he made was that the greatest enemy of effective policing is the loss of public confidence. I suspect that our processing, in Toronto at least, has contributed to the enhancement of public confidence in the police. By no means is it the only thing. I want to make it very clear that the police themselves have undertaken very serious professional standards which they have insisted upon with their officers and they are entitled to a great deal commendation for that, but the complaints process is in that balance and has contributed.

I believe I can say to you that the system is operating reasonably well, with some tensions, and I think the tensions are appropriate. There is a need for an arm's-length process, but we manage, in terms of police management at least and of myself, to function with either an understanding of how it operates, or when we do not, we occasionally go to court and work out the jurisdictions. That has happened too; on the right to a private life, for instance.

I understand there are a number of issues which have been presented to you and I will just touch on them: issues such as the right of an officer to a private life; the question of evidence before boards, the nature of the evidence and standard of proof in cases before boards of inquiry; the issue of whether or not the commissioner ought to have the right to initiate a complaint or a review; the issue of the chief of police addressing penalty; the issue of whether or not there ought to be a verdict of exoneration and whether there should be a limitation period.

There has been an issue put before you, I am not sure how clearly. I am not sure whether it is an issue of persistent complainants on the one hand or frivolous complaints on the other, and they are not the same, but that issue has been raised.

There is the issue of whether or not informal resolutions should remain on the record of the officer. There is also an issue of whether or not officers, upon resignation from the force, ought to be removed from the jurisdiction of boards of inquiry.

Finally, there is the issue of mandatory civilian review or voluntary opt-in or none at all. Of course, that is a matter for the Legislature and I recognize that. There is one thing I would like to say with respect to it.

When I sat as chairman of the task force, we had terms of reference and civilian review was not included in the terms of reference. At that time, many people took the position that it ought to have been or that the terms of reference were wide enough to incorporate it. Our view was that it did not and we would not be making formal recommendations on civilian review to the minister.

What we did say to the people presenting before us was, "If you have something to say about civilian review, we won't prohibit you from saying it

and we will pass on to the standing committee on administration of justice your thoughts." We told them that.

I did, and I understand from Mr Arnott, the clerk of this committee, that they have not been presented to you. Some months ago, I had these volumes prepared for your use and submitted. There is no statement by me or by the task force in this at all; all it is is a compilation of all the submissions which were made before us which addressed the issue of civilian review of police complaints.

Included in that on many occasions was the issue of the expansion of the process. There were 74 such submissions. We have excerpted them from the transcripts so that all that is in there is essentially what has been said. In some cases it is just a line; in other cases it is much more elaborate.

Those volumes are in the hands of the clerk, I believe, and are available to you. There are at least a dozen of them in your hands, and I felt that I owed it both to the public who made the presentations and to this committee to put the two together.

I would be happy to hear any questions you have, if I can be of assistance to you on any of those issues which I raised or any others that you have which concern you.

1430

The Chairman: Fine. Thank you very much, Mr Lewis. We have Mr Polsinelli and Mr Kormos.

Mr Kormos: Good to see you this afternoon.

The Chairman: I am glad you are pleased.

Mr Polsinelli: Mr Chairman, thank you. Mr Lewis, thank you for your presentation. About a month ago I had the opportunity to spend a shift with a police officer from 31 division, Staff Inspector Fantino. We spent about eight hours in a cruiser and—

Mr Mahoney: Voluntarily?

Mr Polsinelli: Yes, voluntarily, responding to police calls. My riding is part of the Jane-Finch area. I guess everybody has his own perceptions of what that area is, but I found—

Mr Hampton: Did anybody complain about you?

Mr Polsinelli: I did not get charged, by the way.

I found that at the end of that eight-hour period my sensitivity to what the job of a police officer is increased tremendously. I do not think I really realized before that period the split-second decisions that they have to make, the pressure that they are under. In every call that they respond to, they are under pressure because they do not know if it is going to be a false alarm or a life-threatening situation.

I guess my question to you is in regard to your investigators. What type of sensitivity training do they receive in terms of what a police officer's job is while they are investigating the police officers?

Mr Lewis: Over half of them are former police officers, and that is a clear assistance on that point, Mr Polsinelli. My director, the chief administrative officer, himself was a detective in Manchester and was an officer of the Metropolitan Toronto Police Force, albeit many years ago. He has extensive policing experience, as do others on our staff. They meet and they discuss these issues and the police are not slow to bring to our attention the pressures of their position and the needs. We are very well aware of them. As I have said, I myself have been active in the criminal justice system for many years and have some knowledge of the matters that you refer you.

Mr Polsinelli: What about the other investigators who are not former police officers? Have you ever considered maybe letting them spend a couple of nights on the beat with a cop?

The Chairman: Or with Mr Polsinelli.

Mr Polsinelli: Or with me.

Mr Singleton: No, we have not done that up to this time.

Mr Lewis: I do not know that I would have any particular objection to it. I can say to you that I do not know what it would result in, in terms of further advantage to the police. I go back to the statistics and say that officers are not getting exactly overdisciplined under this statute. If could be very blunt about it, Mr Polsinelli, those who might have ground to complain might be members of the community who do not find many of these things ever, resulting in a finding of misconduct. So we are very aware, but I have no basic objection to what you are suggesting. I just think that the police are exceedingly well protected by this process.

By the way, I should mention that one of the reasons they are so well protected, aside from the fact that I think our staff is very alive to the pressures, is that no complaint can be proved unless it is proved beyond a reasonable doubt. I can tell you that, as a lawyer, I do not have that standard going for me if somebody complains, nor did I as a judge, nor do other persons in other vocations, many of which are difficult vocations, such as medicine and so on, where a lot of split-second decisions are made.

Mr Polsinelli: But I guess my point, Mr Lewis, is something more than that. I think that for a public complaints system to work, it has to have the confidence not only of the public but also of the force, and it seems that the confidence of the force in this system is somewhat lacking.

Mr Lewis: I will not disagree that there has been a strain, but I am not prepared to raise to the level of reality what was essentially a gambit of rhetoric and has been very successful. I can say to you that when the conflict occurred, the officers of this force were told a number of things which are simply not so.

So except for those who have been before boards, a good many of them believe, for instance, that they are liable to be victims of a board which does not understand them on evidence that is absolutely unreliable. They believe that and have probably told you, Mr Polsinelli, when you were out with them, that they can be convicted on hearsay.

Mr Polsinelli: But I know better.

Mr Lewis: You may know better but they do not know better, because they have been told what is not so.

Mr Polsinelli: I can appreciate that. On another topic and quite quickly, I would just like your opinion on this. The Metropolitan Toronto police department and the Metropolitan Toronto Board of Commissioners of Police are recommending that the act be amended so that a policeman's private life does not form part of the complaints procedure. I would like your opinion on that.

Mr Lewis: I do not have a strong personal view on the issue. Could I give you a bit of the history of it? I think it is important that you understand it. First, there are very few complaints that actually touch upon the private life of an officer, but I understand the emotional kick that has for officers. A case that came before us that is referred to in their brief that involved a cottage. I think you might like to know what that case is about.

Two officers went to a cottage on a holiday weekend or whatever and got very drunk. I can say this because they have been convicted in a court of law. A neighbour attended to complain about a dog of the person they were visiting. The long and short of it is that the three men, two of whom were police officers, beat him up very badly and he suffered some serious injury. He did not know they were police officers.

The Ontario Provincial Police were called in by him. They investigated, charged these three men with assault causing bodily harm and of course discovered they were police, told the man and he lodged a complaint. Immediately the Metropolitan Toronto Police Force took the position with me: "You don't have any jurisdiction. It's private life. Get out of it."

I looked at the act very carefully because, as I say, I did not have a strong feeling on the issue personally and said, "By golly, I have exactly the same authority as the chief of police," and the chief of police clearly has the authority under these circumstances. So I said, "No, I'm afraid I do."

We had quite an interesting series of meetings and disputes over this and in one sense it was a perfectly lovely case in that it was absolutely pure. It was not a case of an officer off duty saying, "I am a policeman and you can't do this to me," because immediately he does that it is not private life.

I invited the police to challenge me. They said it was nonjurisdictional and so ruled it. I received a request for review and said that I was going ahead. They took me to the Supreme Court, Divisional Court, and they did not succeed. The court said it is obviously within the jurisdiction of the act, and the court's view was that it is the kind of conduct that could reflect upon the ability of the officer to perform his duty. That does not mean he could be dismissed, but it means that it was within the range of possible penalties, if proven. So we had the jurisdiction.

All we have done with the case is watch it because it was going through the criminal process. Since the standards of proof are the same and the evidence is exactly the same, we let it go through the criminal process. As it happened, the officers were convicted and were fined \$1,500 apiece. They have appealed. So, given the law as it is, my position is that if they fail in their appeal, then I will expect that some form of discipline takes place. In any event, the chief would take disciplinary action in this case because the officers were convicted.

My view was that while my own feelings were not terribly strong on the

issue and I understood how officers feel threatened by the issue of private life, none the less, as commissioner, I was not personally about to restrict the statute that I was administering or what I thought the statute provided.

I want to say this: There are circumstances where you might well argue, and that may be one of them, that it could have a real effect upon the ability to perform. I can think how it would be for lawyers; as a lawyer, there are things I can do in my private life that would reflect upon my ability to continue as a solicitor. It would be inconsistent with my ability to be a lawyer.

So the issue essentially is one that I think you have to decide. There are some complaints processes which protect the police when they are not on duty. I believe the RCMP and Manitoba are two of those examples. That is really all I can tell you about it.

1440

Mr Polsinelli: The question I guess is not whether or not your jurisdiction extends to that statute, but whether or not it should extend to their private lives. I appreciate the points that you have been making, but since the chief of police can and does take disciplinary action when the situation warrants, the question is, should a public complaints commissioner also monitor the action that is taken?

Mr Lewis: I have given you a criminal example, but there are noncriminal examples. Then the issue becomes, would the chief take action? Do not forget that our system is primarily an appellate system. We are in review of the chief. The chief has got all the right to do the disciplining under this act before I ever get near it, other than to monitor.

There are things that the chief is not too keen to get involved in. What if you had an officer do something that in a particular community was not criminal but was seen as really rotten in a community, not consistent with what they see as a police officer's role? It might be something that was racial or it might be any number of things. Does the community have no response? It will not have if it is restricted.

Clearly, I think that is an area where restraint is necessary. I think that it has to be looked at on a case-by-case basis and it has to be something that truly affects the ability of that officer to conduct himself. But, as I say, I do not personally take a strong view on it. I understand that it is a concern.

Mr Kormos: There are three areas that I would appreciate some comments on. Among other things, it has been suggested that there ought to be a police-nominated component in the panel in what is designed now as something akin to a tripartite panel. Of course, one of the arguments is that the traditional tripartite panel that hears even industrial situations inevitably has a representative of the worker on it.

Do you have any concerns about that in view of the fact that, as you say, the rules are what they are; in view of the fact that would only be a one-third component; in view of the fact that the bottom line is—and Mr McGuinty has been very skilful at pointing out that there is more to the province than 52 Division in downtown Toronto—that in communities where these nominations are going to be made, you are going to have as often as not the types of persons whose natural biases, not malicious biases but natural biases, tend to be pro police as compared to pro anything else?

I know that you have had the benefit of being a provincial judge. For some people who have spent time in the provincial courtrooms, there appears to be for good social reasons a disinclination for a judge to suggest that a police witness is not telling the truth, as compared to a civilian, especially an accused. A judge might preferentially and, as I say, for good reasons be inclined to say, "Notwithstanding the evidence of the officer, I have a reasonable doubt," and thank goodness for reasonable doubt.

But in view of the fact that the types of persons who are going to be on these panels in communities across the province are going to tend to be the favourite sons or daughters of the status quo, if you will, renegades are not going to tend to be appointed regardless. What harm is there really in police representation? Do you have any qualms about that?

Mr Lewis: There are other systems which do have police officers sitting as one member of the panel. There is no question about that. They operate fine, I suppose. They do not tend to be built like this system. This system, remember, permits the police to do the whole job themselves if they wish. It is only if they have declined to do it that normally it gets into the hands of a civilian board.

In most of the other systems in which you do have police officers there, the case goes straight from investigation to the board on which the police officer sits. They are usually not disciplinary boards; they are usually recommending boards back to the chief of police.

What has happened in this statute, Mr Kormos, is—I have to tell you that I think this statute is a delight, in a sense. I have always been fascinated by it. I think it is one of the cleverest bits of trying to balance the interests, the checks and balances, that I have ever seen.

This system was designed in a real effort to bring the police on board, to give them a stake in the process and to keep them involved. You have heard, I know, people come before you and say, "You shouldn't let the police do the initial investigation," and this statute does do that. It was an effort to give them a stake, to give them a position so that they do the first investigation and they make the first decision. If the chief decides that it is going to be discipline, he sends it normally to a police tribunal so that it is the police, not citizens, who make the decision. They can acquit or they can find guilt.

It is only if there has been an appeal of the chief's decision or a declining of disciplining that you get to these civilian boards. I think that is the reason serving police officers were not permitted—let's take a close look at the statute—to be appointed by the one-third group which is composed of the police association and the police commission. It does not say anything about the ones who are appointed by the municipality; presumably they could do it.

Recently, the police commission-association side in Toronto appointed a just-retired and, I might say, a very fine career police officer, Pat Lynn, to the thing. I do not think this system was set up with the intent of having officers on it because of the amount of power the police are given in it. That is only my view. Could it work with them on it? Almost anything can work as long as it is open. Again, it is a majority decision. If the police officer was really out of line, the others would not have to go along. Does that answer you?

Mr Kormos: Yes, I appreciate that. On the issue of being proactive

as compared to merely reactive, it has been suggested that the commissioner should not have the power to initiate his or her own investigations without there being a complainant. Would you respond to that? It was suggested that there is inherent danger in giving the commissioner that amount of power.

Mr Lewis: I think the fear is that you would have a commissioner who is going to go around and lodge complaints at will and whim, causing a great deal of grief. I should tell you a little bit of the history of it. There used to be no restriction on complaints in the 1981 act and there were a couple of people—one of whom appeared before you, Mr Borovoy, and another lawyer—who used to lodge complaints out of the newspaper. They would read things and they would say: "That is horrible. Sidney Linden, do something about it." That upset the police. They felt that the process was being driven by interest groups, if you will, so the act was changed.

Now it reads that it has to be a person directly affected. That could be an eyewitness. But if somebody complains out of a newspaper, I have to respond. These people still occasionally write. Then I have to get in touch with the person who is in fact directly affected. If they do not pick it up within 30 days, the matter dies. That is the history.

I think there are circumstances in which the private interest of complainants really should be subsumed to the public interest. In other words, complainants have a lot of reasons why they may not want to come forward. They have their own axes to grind, their own trials and heaven knows what to put in the balance.

There could be circumstances—and I will give you an example that our office was involved in—the Morrish Road incident, long before my time in 1981 or 1982, in which police raided a party, quite properly, out in Scarborough. There were 300 or 400 people, but right under the lens of CTV News there were some officers beating on people as they came out of the house. It was really a very violent event, one which ultimately drove the chief of police to apologize on behalf of the police force to the public. If no complaints came out of that—it could happen that nobody complained. But you have this on CTV. What happens? Do we just ignore it? I do not know.

There are sometimes circumstances which can give a lot of concern in a community. There was a death a year ago in Toronto and no complainant came forward for a long time, yet the community was starting to go up in smoke over the issue and could not do anything. There was no jurisdiction to move at all. We could not even act as intermediaries.

Something that our office has had the opportunity to do, I think, rather effectively on many occasions is to get between the police on the one hand and concerned individuals or groups on the other, without specific complaints. We have done it with women's groups, we have done it when we had concerns about police attitudes to sexual assault matters and so on.

I use my elbows a bit to get in sometimes, but I do not think the right of a commissioner to do that would be a bad thing. Again, I think it would have to be exercised with restraint. In a word, I think the commissioner can be made to look pretty bad. I really do.

Mr Kormos: Last, at the beginning of this week the Attorney General (Mr Scott) left me with the impression that the Metro procedure was the first stage of the experiment, that this legislation is the second stage, that is to say, with opting in, and if all works well, at some point the whole province

will have access to a civilian complaints procedure. I am very much getting the impression that your opinion is that the Metro experiment has been very successful.

Mr Lewis: Yes, I think so.

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Mr Kormos: From your point of view then, your status, why would you not want to see access to the procedure made universal across the province? Indeed, you are well aware of some of the complaints by the police, from the police perspective, "Here I am a Metro cop and I'm subject to this extra level of investigation and procedure, but my brother or sister in Peel or York is not," or from the point of view of citizenry, I am in Toronto and I can complain and have access to this dispute resolution procedure, if you will, but down in Niagara, I do not even come close.

Can you comment on whether you perceive a need—obviously I do—if the experiment is successful, to introduce it to the province, and would you comment on any fears you might have, various rationales for municipalities not opting in: the fear of the cost or the fact that a municipality that maybe has a police force that is not functioning as well as it should be may well be aware of it and may be loath, power structures being what they are, to introduce a procedure like this for the very reason that they should be introducing it.

Mr Lewis: Yes, I think the system has worked well in Toronto and I think it has got most of the kinks out of it so that it is in a state now that it can be looked at as to whether it ought to be permitted to expand, with or without some amendments.

I want to make it entirely clear that I defer to you. It is your decision, not mine, as to whether or not this should expand at all or entirely. Any decision you make, I am prepared to live with and will assist in. If you should go on an optional basis or if you should some day choose to be mandatory, we can adapt and will serve. I think we could serve well, but that is a matter for the Legislature and municipalities to consider.

Cost? Much of the cost is already borne in the existing infrastructure. We are a functional office that I think is pretty stable. A mid-sized community would not bear a very large cost, and of course the act itself provides for a cost-sharing mechanism between the province and the municipality, so while it would not be without cost, it would not be high. Do not forget the police forces in most of these municipalities have some existing mechanism for the resolution of complaints, so they have some infrastructure already on the force. I do not think they would have to beef it up much. What they would get into is some paperwork, but that is a good thing, because it is the paper trail that is really important.

The main criticism in Toronto in the past was the closed and secretive nature of the process and much of that has been dissipated just by the fact that it is open. People say: "It's good. They listened to me and they didn't buy it, but, by golly, I understand what Mr. Polsinelli says, tough job, but at least they answered me."

I do not know what to say about communities that have a less than adequate police force that would want to hide it. I do not know. Maybe it is not such a bad thing if that were exposed, but then I guess you are not going to get them opting in, are you?

Mr Kormos: Precisely.

Hon Mr Scott: Perhaps I can help Mr. Kormos by saying that our current estimates of the add-on cost to the present operation that Judge Lewis runs, based on the assumption that it would be mandatory and that the provincial taxpayer would bear the entire cost and there would be not a cost-sharing arrangement, I think is in the neighbourhood of something slightly under \$5 million.

Mr Kormos: That sounds like as strong an argument as any for making it universal right here and now.

The Chairman: That is your position.

Hon Mr Scott: When you get to be the government—you know, the NDP are just Liberals in a hurry.

Mr Hampton: That is not what you were saying yesterday.

Hon Mr Scott: The third step follows quickly on the second. We are at the second stage of a process now, as I said the other day, and you want us to come us to the third stage, which I have described, and we understand where you are.

Mr Kormos: He is right, Howie. If he makes this last to the next general election, he might have to do it.

Mr Kanter: Following on some of the questions by Mr Kormos and focusing on the second stage that is before this committee, the expansion of civilian review, I appreciate the commissioner's comments that it is in our hands whether we expand and how we expand.

I am wondering if you have some experience: Although your jurisdiction is legally limited to Metro Toronto, have you received inquiries or complaints from outside Metro? Do you have any sense whether there are citizens concerned about the current review processes in cities or jurisdictions outside Metro? Can you help us with your experience if not your advice.

Mr Lewis: We receive complaints on an ongoing basis from outside Metropolitan Toronto. They come in and we of course refer them back to the local police force and/or the local police commission, but it is not an unusual matter for us to have inquiries made.

The job has required me from time to time to go to other places in the province, and I have spoken to community groups. Certainly, I know there are people in other communities who are expressing a desire for a complaints process that is seen as independent and different from the one that exists. The task force, of course, was the clearest example of that. If you wish to take a look through the volume at your leisure, you will see there is significant statement out there that it might be worth while.

Let me put it to you this way, Mr. Kanter: Every police force, by the nature of its work, is going to face some complaints. Now, some will receive very few; larger ones obviously will invite more. The more complex the community, the more likely there will be circumstances that will give rise to complaints. How they are dealt with I think is very important in terms of the public's perception of being at one with their police—I go back to Mr. Yalden.

I think the purpose of the Metropolitan Toronto system is to enhance community-police harmony. Bluntly put, it obviously is not there to go around

dinging policemen; it is there to try to put the community and the police force in some equitable balance. I do not think any police force can avoid that need.

Mr Kanter: To just follow up with one further question, we have, I guess, something over 100 police forces in the province and many of them are, of course, large regional forces or large forces with several hundred members. You indicated that most of those forces could benefit from the kind of thing we have here in Metro.

There are some smaller forces, some quite small. Some of the other members were raising these examples earlier this week. Is this model relevant to a community with a fairly small police force? Suppose you are talking about a police force of four or 10 or 20 members, is this model relevant for them?

Mr Lewis: I do not think it would ever occur that such a force would come under this act by itself. You would have one small community opting in for a 10-person force. It would be unwieldy, obviously. On the other hand, there could well be circumstances on a regional basis in which a complaint arising out of one of those forces could very easily be conducted under this act if the region or a large portion of the region was under it.

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The act is not all discipline-driven. There are a number of ways in which you can resolve matters under the act. Remember, I have said I think it is an exquisite act; I really do. A lot of complaints can be turned into inquiries. There is a means of doing that under the act and it is done fairly frequently. No discipline occurs to the police officer. There is a statement to the citizen that assures that all is well and things were done properly, yet it does not require a lot of investigation. All it does is require my approval, and that is normally—not always—granted. Our police force is pretty sophisticated in the use of the inquiry thing.

There is an informal resolution section under the act. I think that is one of the areas that really needs beefing up and can be a very important feature of the legislation in the future. During the period of conflict between the association and our office, the informal resolution section was not well used. It is hard when you are on a war standing, if you will, to get into informal resolution. It is a mediation process and it is a good one.

I think one of the impediments to it is that the way the statute reads now is that it is possible that an informal resolution can wind up on the record of an officer. I do not think that should happen. I can understand why an officer does not want to get into an informal resolution if it can wind up adversely on his record. It strikes me that a way around that—I think the police commission makes this recommendation—would be to not allow an informal resolution without the commissioner's approval, so that you do not get some really horrible case being informally resolved but do not have it go on the record. You can get rid of all sorts of these cases on an informal resolution basis.

I cannot tell you how many of these citizens, in my view—all they want is to understand what the police officer's position was. They do not want to get into an adversarial stance with the officer; they want to be able to work it out.

I know reference was made about all these frivolous complaints. I take

some exception to that characterization, I really do. I was quoted by the Ombudsman of New South Wales in its Legislature on this very issue once. I wrote to him about it. My experience is that most citizens have a very high regard for the Metropolitan Toronto Police Force, and I would think that is probably true for other forces throughout the province. They have a really high regard.

They get into some minor issue with an officer, often I might say over a traffic event. If the officer says something that is deemed by that person to be uncivil—curses, for instance—or is rude, it seems to me that often the police tend to think that is on the line of a frivolous complaint, and it is not at all for the citizen. The citizen really tends to hold the police in high regard and anything that reduces that is a real shock. I really think they are shocked. I think that is why we get a lot of complaints. They say, "My God, we did not think policemen talked like that."

That kind of thing could be resolved very easily if we were working hard on an informal resolution thing, because the citizens usually are not out to exact vengeance; not usually. I think that goes a long way towards the public relations ends of the force.

One thing Mr Kormos said that I really should touch on has to do with going to other forces. I did not address it. It was asked whether this system could go to other forces, whether it should and so on. I will tell you one reason it might be of value to other forces. No other police officer in this province gets the rights of Toronto officers on complaints; they just do not. Citizens do not have the openness that this system provides, but I can guarantee you that the Toronto system provides far more rights to the officers than any other process in this province. It starts with proof beyond a reasonable doubt. Their statements cannot be introduced against them without their consent. There is a whole litany of protections.

I do not think you should have this office opened up in a town with 10 officers; however, I see no reason why it could not be picked up in a larger process.

Mr J. M. Johnson: There are just two questions, one dealing with penalties: I guess in Manitoba the chief does have input into the matter of penalties.

Mr Lewis: Yes.

Mr J. M. Johnson: In the case of the RCMP, they have control of it.

Mr Lewis: Yes; that is right.

Mr J. M. Johnson: Is there any merit in the Manitoba situation, for instance?

Mr Lewis: Yes. The difference is that the chief of police has no role at all in the Manitoba system in determining penalty on a public complaint until he is asked by the commissioner, "What is your opinion?" whereas in Toronto the chief gets the right. In 85 per cent of the cases, what the chief says is final because most people do not ask for a review in Toronto. In the Manitoba system, the chief is excluded. They do not even investigate. So what happens in the Manitoba system is that because they have excluded the police to such a degree, they bring them in at the end and say, "What is your opinion?"

You are right on the RCMP system, which is fairly common around the world. In this regard, the board or the commission, the civilians, recommend penalty and the commissioner decides whether or not to do it. But again, the RCMP commissioner has not had quite the (inaudible). The Royal Canadian Mounted Police Act is pretty complex, and it is a fair bit of us and not us.

I think what you are getting at is that there has been a recommendation that the chief of police have a right to make a submission on a penalty before a board. That was raised. I do not have any problem with it.

Mr J. M. Johnson: Is any consideration given to an officer's previous years of service?

Mr Lewis: Oh, yes.

Mr J. M. Johnson: That is all taken into consideration?

Mr Lewis: Yes.

I do not understand the parts of the brief of the police that say these boards might be acting in a sort of vacuum. It is just not true. What occurs on those occasions when an officer has been found guilty is that his service record is trotted out, and normally it says that he has had 84 commendations for a variety of things and one neglect of duty, that sort of thing.

Mr J. M. Johnson: So consideration is certainly given to their past years.

Mr Lewis: These officers are well represented, they really are, by very fine counsel.

Mr J. M. Johnson: Another situation was in the disposition, that no further action was warranted if indeed an officer had acted properly. Is that clarification enough?

Mr Lewis: Is that where they are asking for a verdict of "exonerated," that sort of thing?

Mr J. M. Johnson: Yes.

Mr Lewis: I have some problems with it. I understand what they want or what they are saying. It seems to me that under the existing legislation, the chief of police can say whatever he believes, just as a judge does. Judges do not sit there and find people innocent. They say: "Not guilty, but boy, I can tell you there is just no evidence here. I do not know why you brought him before me." They not only can; they do it.

In letter after letter of the chief of police that I see, he makes no bones about the fact that he thinks this officer was pristine in his conduct. He says it. Now, that should be enough for the officer, I would think. It clears him. What it does occasionally when it is overstated is that frankly, I think it causes people to seek reviews. I think some people who would go away, if you will, if the conclusion were "no action warranted," who get a little annoyed when they read that the officer was absolutely innocent. They were there and that may not be their view of it. It is the old eye-of-the-beholder thing.

I am not adamantly opposed to such a thing, I am just saying I do not

think it is necessary. I think the police would like to have the opportunity to make the officers feel better, but I think they can do it by the way in which they express their judgement. I do not think they need to have this "exonerated." There should be very few cases where you can say "exonerated." I know from my experience on the bench that you may have doubt and you cannot convict, but it is darn seldom that you can say, "Innocent 100 per cent." Usually you are dealing with conflicting stories and what do you do? It is not proved. But it is an issue and I understand it is there for you to consider.

Mr Epp: I had two questions. One dealt with frivolous complaints and you have dealt with that, Mr Lewis. The other one has to do with the constitutionality of your complaints bureau. In the brief of the commissioners of police, they indicated it might be unconstitutional to have a complaints bureau in Toronto but not have one in other parts of the province.

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Mr Lewis: Yes. Would you like me to comment on that?

Mr Epp: Yes, I would.

Mr Lewis: I was fascinated to see that because that is exactly what the Supreme Court decided in the Weller case, that it was entirely constitutional. I think that they should know. That was what the association challenged us on. Among other things, they said it was not fair and so on, but they said it was unconstitutional because it offended section 15 of the charter, the equality provisions of the Charter of Rights and Freedoms. The Supreme Court and the Court of Appeal says that is just nonsense, it is not true. In fact, officers under this system get more rights. I was saying to Mr Kormos that officers outside Toronto do not get the rights that they get under this system, so it was not a very strong argument.

I would think that the argument might be that, as citizens, why are we deprived of this system, but you can argue that around. In law, it is not unconstitutional. That has been decided by the court. It is not my opinion. It is from the Court of Appeal.

Mr Epp: Yes. Of course, the other side of that would have been that if they get paid more in Toronto, then everybody else should be paid an equal amount of money. I do not think we will want to buy that.

Interjection.

Mr Epp: Okay. Thank you very much.

Mr Hampton: I want to go over some things that have been covered in part already. Yesterday we heard a fair bit about frivolous and vexatious complaints and then you emphasized that there is such a thing as frequent complaints.

Mr Lewis: Persistent.

Mr Hampton: Persistent complaints.

Mr Lewis: Yes.

Mr Hampton: How frequent or how usual is it to see someone who comes and they have persistent complaints about the case, on the one hand, and, on

the other hand, what do you understand by frivolous and vexatious complaints? How should—

Mr Lewis: They should be dealt with?

Mr Hampton: Should they be dealt with in a special way?

Mr Lewis: Sure they should. Yes. I could go to your first question. I know about four people perhaps you could call persistent complainants and one of them has gone away. He changed his job. It does not bring him into contact with the police any more and so he does not complain any more, but he used to be something special I have to tell you. I had no difficulty in rejecting that man's positions, although he was persistent, but he is gone. There is another person who did complain for a long time, but eventually had no recourse and has not been complaining lately.

It is just not an issue as far as I am aware. I think the answer to it, when you do run into people like that, is that—let me put it this way—I cannot believe that when the police investigate such a case, they are not aware of the fact that this person has been around before and that affects how they investigate it. They look at it and they can make a fairly quick judgement on whether they are dealing with a real issue this time or not.

But you know persistent complainants, sometimes they can be the real ones because if anybody is going to run afoul of the police, it is the person who feels they have a grudge with the police and they are not going to be in the good graces of the police at the very least. So it is possible that a persistent complainant can actually be a valid complainant on an individual complaint. I would hate to see the day come that they were just denied the right. I think they can be dealt with very well under the system. Unless something springs up, it should not take a lot of time.

With respect to frivolous complaints, there are some. The act provides very clearly that the chief of police can declare a complaint to be frivolous subject to my reviewing on a request. I will give you an example. A man recently complained that the police had done—in fact, actually the example is in the report and I am not surprised by it. He complained that the police had done something terrible to him back in 1984 or 1985. The chief very quickly—he did not go into a big investigation, he looked at it. He knew what was it about and he declared it to be bad faith because that is one of the—frivolous, vexatious or in bad faith. He said, "It is in bad faith." Bang, I've got to review immediately. I said: "You are right. It is in bad faith," and I closed it down. I thought that was in that category in that particular case. There could be justifications for a long time, but they were not in that case.

Occasionally you get people—I think there was some comment about people who may be ill. It happens, but the chief declares these cases as frivolous and they end normally. Occasionally I do not agree with it. Occasionally there is a complaint and he calls it frivolous, declares it nonjurisdictional and they appeal to me and I say, "I do not think so." It does not mean it necessarily winds up being a case of discipline, but it does mean that it is investigated and looked at.

On more than one occasion I have written to a complainant and said, "There is not evidence sufficient to establish your complaint." I have even said the officer appears to have done nothing wrong in this case. I have done that quite often. Then I have also said, "However, I do not think that it was

appropriate to call it frivolous, because the person was really and truly concerned." What is a frivolous complaint?

I do not think incivility issues are frivolous. There may be disagreement between us on that on occasion between the police and myself, but I think they are very debilitating to the police force. The mainstream public that supports this police force so well has to be treated well by the police. A minor matter to a police officer who day by day has to assert authority and so on may seem very serious to a citizen. Rather than calling some of those frivolous they ought to be informally resolved; then nobody is mad. The officer is not hurt. The citizen feels properly dealt with, that is it, but the power to do it is there. I do not think it needs to be expanded.

There was some suggestion that I should be given the right to declare it and I do not think I need any more of that than I have now. I reject those complaints when I think it is appropriate.

Mr Hampton: I have a few more questions.

The Acting Chairman (Mr Kanter): We need unanimous consent to extend beyond the half-hour. I hear no objections to continuing.

Mr Hampton: Officers who resign should continue to be subject to the jurisdiction of boards of inquiry.

Mr Lewis: I know they are, usually.

Mr Hampton: We have had some submissions on that. What is your view of that and what all is involved?

Mr Lewis: I think the law is clear that they are not within the jurisdiction of the board. If they have resigned, they are gone. I can tell you that under the Securities Act there is a specific provision that allows—I was reading a case in the Ontario Reports recently—the Ontario Securities Commission to maintain jurisdiction over a trader after the trader has relinquished his licence and left the business. They say they need that power because that is how they keep the business clean. I think you would need a specific amendment to the act to permit that to continue.

I know in British Columbia they were considering seriously putting such a provision in the act and admit their Attorney General was doing it, but I do not think they went that far, ultimately. One example was given to you of an officer under question who resigned and joined another force. That is true, he did. In fact, he showed up as a witness at a board here and said: "Yes, I was the guy who did it and not this guy. I mean, I did not do anything wrong, but whatever was done I did, and not the fellow you are trying."

Are you asking how I feel about it or how the law is?

Mr Hampton: Both.

Mr Lewis: Okay. The law is clear. They do not have jurisdiction as it stands now. We have had a couple of boards faced with the problem. Officers have been before them and before the matter was completed, they have resigned. I guess they saw no point in continuing. Boards have expressed some regret that they did not have the authority as a matter of public interest to continue. One board went so far as to say, "Had we had the right to continue, this is what we would have done." It was not dismissal. It was something less.

They expressed what their penalty would have been had the officer stayed if they had already found him guilty, but they had not imposed penalties, you see.

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I have problems on the issue. I think there are good public interest reasons why the public complaints commission or a police commission might well want to be able to express its views forcefully. Certainly for a police commission it might even be more than forceful. If they imposed a fine, they could take it right out of the pension or whatever. They could actually make it stick.

But I guess my view of it as a public complaints commissioner is, what more can you do to the guy? He has quit. I do not have a sense of a lot of them quitting and running off to other police forces and getting jobs. In other words, I am not sure that is a real reality, a real concern. It must be my old defence counsel days; you know, enough is enough sort of thing. The person has given up the authority of being a police officer. I would just hope that if an officer has done something really bad that any force that is thinking of hiring him would make inquiries.

Mr J. M. Johnson: Would the force that hired that officer not be knowledgeable about the fact that he quit under—

Mr Lewis: Not necessarily. There is no integrated system that I am aware of. I do not have a province-wide mandate, so I do not have that information to offer them. No, I do not think they would necessarily, but I would expect that a force that is hiring somebody would make inquiries of the force from whence he came. What they told him I do not know.

The Acting Chairman: Howard, are you—

Mr Hampton: I just want to follow up. What I find nagging about this is that in terms of the individual complaint, say you have a complainant and a police officer, in the view of the individual complainant, he or she may be satisfied. The officer has quit, he has left.

Mr Lewis: Sure.

Mr Hampton: But in view of what a board may want to say publicly and may want to say to the police force—

Mr Lewis: You are right.

Mr Hampton: It seems like you leave what may be a chronic situation or a very serious situation in the air. I always get the feeling that what should come out of these things is that, as much as possible, you should try to make the situation whole again. Rather than necessarily punish somebody, you try to restore, as they say in labour arbitration, or improve what was there.

Mr Lewis: I think that is very thoughtful. That is exactly what the board did. It was intent on going on and saying, "If we could, we would have done the following" and making a statement like that.

There is a saving grace under the present situation. If you are not dealing with just an individual situation, only one officer has done a bad thing and you cannot point to the force as a whole, it maybe is not as

serious, but if the case reveals something that needs to be remedied on a broader basis, that is available, because this act provides me the right to make recommendations to the board of commissioners, the force and the police association to change practices and procedures. They are very alive to that and they have generally responded very positively to those kinds of recommendations.

If I saw a case in which an officer had resigned and it gave rise to larger issues than just that officer, I do not think I would hesitate to make a recommendation on the strength of what had occurred. It does not allow the board to do it, though, it is—

Interjection.

Mr Lewis: For instance, I do not think the law society—I do not know. I honestly do not know. I do not think the law society, if I were to up and resign in the middle of a complaint, can continue. I think it is a very unusual situation where they do.

Mr Kanter, I am sorry.

The Acting Chairman: Thank you, Commissioner. I did not mean to interrupt. We have two more people who have indicated they want to ask questions, Mr Curling and Mr Sterling.

Mr Curling: Mr Lewis, you have earned the respect of the community, I think, because of your unique roles that you have played, one as a judge and one as the commissioner and a third one because of your just being you and the acceptability of the community, and I speak of what I have heard from the community.

That then brings me to a point that was made about the sensitivity of the police officer. First, just to say that years ago, maybe seven or eight years ago, I used to give small lectures to police officers at C. O. Bick College, at Brimley and Finch, about multiculturalism and the sensitivity of the diverse cultural society we have. I was really surprised at the limited knowledge of the officers in terms of understanding the community. I am not blaming them; maybe it is the inadequate training facilities there.

When we talk about using a public complaints system, one that may have worked in Toronto, whether it could work in Osceola, according to my dear colleague Mr McGuinty's population survey of 28 people, whether that model can work within that community, I do not know.

But if I do not go beyond Ajax—as he said, "There is life after Ajax"—and we focus within Metropolitan Toronto, say for instance the Jane-Finch area, and look at a situation where we are extremely concerned now as a government, as a people, about the drug situation: as soon as the police officers move in there to bring law and order and all the other wonderful things to have a good society there, the friction starts about their not understanding our society and not understanding what we are all about. The police are then confronted with facing not the drug issue now, but the community friction, police against blacks or police against us in this ghetto area.

Could you then just express your views from the roads you have walked and the roles you have experienced in that sense? I think the point I am trying to make here is that it is the cause of the community to which I

referred explicitly earlier on that brings a sensitivity to the police, where they have better training to be sensitive to the community and we drive that education today. I think we may have to drive the other outer community to say that the public would like the police to be more sensitive to understanding the community, but a community is not static. It will grow and will change multiculturally and otherwise.

Mr Lewis: Mr Curling, I am very grateful for your comments, but I would like to say this, the job I have done has really, only as one of its components, dealt with the specific issue of individual complaints against the police. I have found that the job has had a much broader aspect to it and that is, its opportunity to act as a bridge in larger issues in the community.

I was at a conference in October last year at Aylmer, the police college, which was hosted by the Ministry of the Solicitor General and Chief Harding of the Halton force, who was president of the Ontario Association of Chiefs of Police. If I may just advert to something that we discussed, because I think it is relevant to this issue, at the end of the matter Mr Kanter inquired what was my view as to where we go from here. I thought about it and I spoke to him subsequently about it.

One of the things that concerned me at the conference was hearing from time to time people saying, be they police or community members—and by the way it was a conference of police and community representatives, about half and half; it was on race relations—"It is a Toronto issue." What I said to Mr Kanter subsequently was, I do not think it is going to continue that way. I do not think that is where our future is. Yes, Toronto is the centre for multicultural Ontario, but it is no longer going to be the centre.

Life indeed lives beyond Ajax. Just look at the developments. Drive Highway 401 and see how this city has become a megalopolis and indeed a very different community from that into which I was born and into which many of our police officers, older ones at least, were born.

I think this is a very challenging time for police and for the community, and they both bear responsibility, Mr Curling. I personally think that the institutions bear the greater responsibility, because again they have the infrastructure and they have the public responsibility and public accountability. The police are called upon to do a very different type of job from what they were once before, and I think that is going to reach to every corner of this province. We are hearing it in many ways. We are hearing it in our native communities, too, of course.

1530

Do they need to be more sensitive? I think the task force, of course, dealt with that issue at some length in terms of training. It is only fair to the police. I do not think you can fairly expect to put a police officer into a difficult, complex community without preparing that officer for that community and what its expectations will be. You are right, it is always a problem for an officer to be dealing with an issue such as drugs and to find that what he is confronting is a tension between his role and the community's view of what it needs in policing. It can break down into other things, such as allegations of racism or whatever. The police need a lot of understanding and support in this area, but they also have a big role to play and they have to do a lot of work in the area. I think the task force adverted to that.

All I am saying is that it is not going to stick around with Toronto, it

is a province-wide and a country-wide issue. I think our police are capable of meeting that challenge, I really do, but I think they need a lot of support. One of the things that helps in that process is a viable complaints process that allows the issues to be aired so that they do not fester. One of the things that really concerns me is when people just do not get the opportunity to express their concern. Does that help?

Mr Curling: Mr Sterling has left.

Mr Lewis: I am sorry, Mr Curling.

Mr Curling: I just wanted to comment on the fact about the police investigating themselves and the term that is always used, that justice must not only be done, but also be seem to be done. The resistance that I seem to be getting, or my impression personally from the police themselves, is that it is better off if the police investigate, and I think I got that from you too.

Although that may not reveal any wrong judgement coming out of that, what seems to have been done is a better impression on the public, to know that they have played a part in it and that the investigation can be done outside because the results would be the same, the conclusions would be the same. But it has a greater impact if we have the outsiders making some of that investigation, too. Do you have any feelings in this regard?

Mr Lewis: Yes. I understand your concern and I know there is a lot of advocacy to that end. I am not personally a strong advocate of it and I will tell you why. I appreciate what you are saying and I think you are right, that the issue of appearing to be done is an important one, every bit as important as the reality. But I really think there is a lot to be said for getting the police over a period of time right on side and responsive to complaints. It is an essential managerial role. I have no problem with the police participating in it, as long as they are monitored and they can be seen to be monitored and we have, as we do, the right to take it over from them in cases where we do not think it is being done right or where it would better suit the public.

For example, under the present statute I have recently undertaken an investigation arising out of Jamestown because it appeared in the circumstances that that would be more appropriate. The conflict was such that it would be better for the community and the police if we did it independently. I do not think that is necessary across the board, as long as the right is there to be done when it appears to be a real issue. As I say, we did it there and there was not one complainant, no problem at all with the police doing the investigation. That is not a bad thing. If they are happy to have the police do it, that helps to cement the relationship between the police and the community. What I think there needs to be is an escape valve and I think this statute has it.

I am not diminishing the importance of what you have said or what I know some groups say in the community. It is a real issue that is very alive. I just think this system has the potential to work quite well once we get through the maturation process that I am talking about.

The Chairman: In the complaints that you receive, do you ever receive complaints against prison guards from people who are incarcerated, and if you do, are they numerous? Of course, this act does not cover prison guards.

Mr Lewis: Rarely. We have had a very few. No, we do not get them. Prisons seem to have a fairly great awareness of the Ombudsman's process and

that is where their complaints go. The Ombudsman's office has a presence in the prisons through literature and each prison has a system. Really, they are deflected. We do not get them. We have had them but it is very rare.

The Chairman: I notice that this act excludes jurisdiction in the Office of the Ombudsman. What would be your feelings in the event that this were enlarged to other municipalities in terms of adding to it a component of protection for prisoners, recognizing that they are probably at greater risk than in fact the person who is free out in society?

Mr Lewis: That is very interesting. I have never given it any thought. I guess I just accepted the existing breakdown. I am not sure I can answer you at this stage. I do have a feeling that there is a need for a greater investigatory response to prisoners' complaints.

The Chairman: I was sitting here as you were giving your evidence and I can remember the stories—one does not know how true they were—about running the gauntlet at certain correctional institutions back many years ago or hoses being squirted in on prisoners in cells and so on. I thought about how your whole committee got started as a result of a certain incident that took place in this community. I do not know; I have nothing to specifically say that these people are not being treated properly, but it seems to me that there should be a process.

We are looking towards two things: first of all, respect for the people who do in fact police us as well as guard us and also giving the guards a fair shake. I think they are subject to being accused of doing something inappropriate because that is a nice way of getting back at some fellow who does not give you cigarettes. On the other side of the coin, the concern I would have is that if there were something that happened in a correctional institution, they would have the Ombudsman but that is perhaps not as specific as it might be.

Mr Lewis: The Ombudsman process is not as ultimately discipline-empowered as our process is. It is a recommending process at best. I am sorry, I am just not in a position to really discuss this.

The Chairman: I was really curious to know whether you got complaints. You have said you did. For the ones you did get, would you then tell them that their access would be to the Ombudsman?

Mr Lewis: That is right.

The Chairman: We would like to thank all of you for coming here today. It has given us an opportunity to see how it works and that is obviously what this is all about. We appreciate your taking the time out of your busy schedule to do this.

Committee, there is a letter before you from Mark Nakamura, director of the multicultural and race relations division. Do you all have a copy of it? Paragraph 2 seems to indicate that they were overlooked. I am advised by the clerk that they were on our original list and we did, in fact, notify them and they were invited to attend. I am advised by the clerk that paragraph 2 is not quite accurate. I just thought I would bring that to your attention. In any event, their brief is filed with you.

We stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1541.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989

THURSDAY 31 AUGUST 1989



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From the Scarborough Multicultural and Race Relations Committee:

Gupta, Mahendra, Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 31 August 1989

The committee met at 1012 in room 228.

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS AMENDMENT ACT, 1989
(continued)

Consideration of Bill 4, An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984.

The Chairman: We now have a quorum. Mr Gupta, it is a pleasure to have you here. You have half an hour. Do we have a brief? No written brief. You probably an hour, in fact. You can use all of that time, if you wish, to make a presentation to us, or if there is some time left over, I am sure there will be some questions from the members of the committee. Please identify yourself for the record and then proceed.

SCARBOROUGH MULTICULTURAL AND RACE RELATIONS COMMITTEE

Mr Gupta: My name is Mahendra Gupta. I come from Scarborough. I am the chairman of the Scarborough Multicultural and Race Relations Committee. I am also president of the Hindu Cultural Society in Scarborough. I have lived here for 32 years. Before coming to Canada from India, I was in the government of India. I was a lawyer and also a small claims court judge. I have been a teacher here for a number of years. Presently I am retired.

I would like to thank your committee for inviting me to come and present our views for your kind consideration. Unfortunately, I did not have too much time to prepare, so I could not bring some of the cuttings and other material that I had, but I shall try to present as briefly as possible.

The first question that comes to my mind is, why do we need a law of this kind in Canada? There are other countries like Australia, Great Britain and other countries where we have racial problems where we have these laws, but in other countries, we do not have a law or a law is not needed. I think there are obvious reasons why we need this law. I will just quote some statistics.

Bob Wong, the minister responsible for multiculturalism, last week quoted some figures himself. He said that less than 29 per cent of the population of Metropolitan Toronto is Anglo-Saxon, which means over 70 per cent of the people, approximately, belong to non-Anglo-Saxon origin.

If you look at the composition of the police, I do not have any harder statistics to prove this but they were published in the Report of the Race Relations and Policing Task Force that came out in the early part of this year, I think nearly 90 per cent of the police force is Anglo-Saxon. In spite of the fact that over the last 10 years the minorities have been complaining and requesting the government and the police force for recruitment from their ranks, the number of minority people getting into the police force is very small.

I wrote a letter about three or four months ago to the Toronto Star, where I pointed out that the police seem to take pride in the fact that the proportion of people serving in Ontario from minorities is going up from four per cent to about 4.2 per cent or 4.5 per cent at the end of 1990. They seem to think that is great progress made, that out of a total number of policemen, about 5,600 or so, there are about 200 or 300 who are of non-Anglo-Saxon origin or who belong to the minorities.

Unfortunately, the public in Metropolitan Toronto does not seem to have so much confidence in the police, although I should point out that I think most of the policemen are very fair and just, but there are quite a large number of them—they are in the minority—who are not only racist but their attitude towards the minorities is not very good.

Just to quote an example, I forget the name of the judge, but he gave a judgement only a few days ago about a Scarborough black man who has been tormented for five or six years. Every week he got about three police tickets as soon as he came out of the house. Finally the charges against him were dismissed and the judge ordered that there should be an inquiry into the conduct of the police against this man, as to why he was being harassed so badly. He was given a ticket as soon as he came out of the house for some infraction, even if he was walking. This was already publicized in the newspapers.

It is most unfortunate that when the police killings take place, they are only against the black people. We have all these incidents that are happening. They seem to be against the minorities.

Not only are they killed; they are arrested. I have on my own committee people telling me that one of the young boys had a gold chain and the police arrested him. They said, "Where did you steal this?" They presume that if you are black or if you are a minority, you have to be illiterate, you cannot have any money and the jobs you can do must be only of the lowest type.

I think personally there is a reason for all this. The Anglo-Saxon people ruled the world. They had the black people as slaves for a long number of years. They were poor. They lived in very poor conditions. I think that kind of image still persists.

This happened to me personally, and I narrated this case. It happened about 20 years ago when I had two cars and I was trying to sell one car. A policeman came and questioned me. He said, "How can you have two cars?" I said, "Look, I am the head of a department of mathematics here in Toronto and I make a fairly good salary." He just did not want to believe it. He said, "How is it possible that a black man can be head of a department?"

This kind of image—I think it is a lesson to a great degree—still persists. I think that is why the policemen are more brutal and more aggressive in their dealings with the minorities, and the reason why police people will not allow the visible minorities or other people to come on the police force.

We have people—Greeks, Italians, Germans and from other nations—visit my committee and they also have the same feeling, that although they are white, still their number on the police force is very small.

1020

The reasons are obvious. First of all, the police have great power. I maintain that in spite of the high positions of our ministers and the government, the police can arrest them. They can shoot them. You can try them later on, but at the time, they have a gun; they have the power to arrest. Then they also get a very high salary for people with a grade 12 education, which I think should be raised. A policeman gets about \$46,000 to \$50,000, including allowances. I think even a lawyer or a doctor in the first year would not make that kind of money. Of course, they have a strong police association and they naturally want to keep out other people.

This kind of attitude has created these complaints against the police. I am quite familiar with them myself. I have made complaints myself to the police commissioners, to the civilian commissioner, and I know what has happened. I will mail it to you.

I want to point out that the act as it stands today, the Metropolitan Police Force Complaints Act, 1984, is like a toothless tiger; it has hardly any teeth in it. I will point out why. I have read the Report of the Race Relations and Policing Task Force of 1989, and I will just point out some things here that have been suggested.

On page 184: "A recurring theme in the presentations before us has been the demand for mandatory, province-wide independent civilian review of allegations of police misconduct against members of the public. Many requested the mandatory extension of the office of the public complaints commissioner." These arguments were made in 52 oral presentations and 22 written briefs to the task force. Those arguments have been forwarded to the government and the standing committee on administration of justice. I am quite sure you have seen them.

It goes further, "It is patently obvious that a publicly credible, accountable and independent civilian mechanism for public complaints is basic to responding to allegations of racial intolerance or other misconduct by all police."

Further: "There is considerable demand and need for an accountable, independent and civilian standardization of the process. The Ontario Provincial Police ought also to be included if all persons, including native people, are to have an independent and effective means for the resolution of their complaints of misconduct by police. In general, public confidence in all police would be enhanced" greatly.

As I pointed out earlier, I think public confidence in the police is very low. People have no faith in them. There is nothing much they can do. We have a recent case in Scarborough where in a church on a Sunday morning, when the service was in progress—this church is mostly visited by blacks and East Indians—they disturbed the congregation and arrested five people. They could not wait even for the service to end. They arrested them and later on they found they were not the right people. Why does it not happen in a white church?

People in my committee often ask these questions. Why is it that white people are not being killed? They also use drugs. They also steal cars. They also commit offences, maybe less than the blacks. I do not know on a percentage basis; I have no statistics to prove or disprove it. These questions are often being raised.

We have a case now happening in the United States in Boston. Another black man was killed in Miami. Of course, this is a regular procedure. It happens to be. But it is always blacks who are being killed. I do not hear of any white man being killed by a black policeman. That would be something of a record.

When somebody has a complaint, first of all, he is very afraid of the police. The general public is very afraid. An average Joe does not want to go and complain to the police because he is afraid. He thinks the police will get him somehow or other. He will give him a ticket or charge him for something or other, because the police have the power. So in the first place, please remember that most of the people who are affected by the police or who are aggrieved would just not lodge a complaint under the present system. They are too afraid.

If I remember correctly, about a week ago there was an article in the newspaper that one of the chiefs of police—I think it was in Sudbury, North Bay or some northern community—said that if somebody is found laying a complaint that is found to be unreasonable or without foundation or has no substance and is dismissed, then the man can go to jail for five years. You have that kind of threat hanging over you when making a complaint, which will probably end with nothing anyway. The policeman might get a reprimand or just a mild rebuke. The act says here in subsection 23(16) that you can lose three days' pay. Big deal. You can commit a murder; you can do anything you want and lose three days' pay.

In Montreal, also, I read in the newspaper that there was a police officer who had killed a black. He has now been reinstated by the board of inquiry or whatever it is. They said: "Look, this man has lost a year and a half's pay of \$97,000. Isn't that good enough?" It was \$97,000 for his life. Do you mean to say we can equate a man's life with \$97,000? This kind of thing goes on day after day, year after year. I have lived here for 32 years and I do not see any improvement in the situation. It just goes on.

Previously, these things did not happen to such a degree as they are happening now. I think the reason is obvious: The number of black people or minorities is growing. As I pointed out, according to Mr Wong's figures, less than 29 per cent of the people are Anglo-Saxon. More than 90 per cent of the policemen are of Anglo-Saxon origin. That is where the problem lies. I feel that to make this law worth while, the police composition would have to change. I do not know; it might take 25 or 50 years by which time 99 per cent of the population may be of non-Anglo-Saxon origin. I do not know what will happen. I am sure I will not be here.

What I want to point out is that if people are going to come and make a complaint, many things have to be done. First, they want to feel confident that they will not be harassed by the police. Second, they want to make sure their complaints will be heard and heard speedily.

I made a complaint about five years ago when the office of the public complaints commissioner came in. I went to the police station. First of all, the police sergeant said, "Why do you want to make a complaint?" I said, "I feel I have been wronged." He said: "No, no, you don't have to worry about it. You can give it to me verbally and all that." I insisted. I said, "No, the law says I have to get it in writing." Finally, after great persuasion, he agreed to write it down and he gave me a copy.

Actually, as I expected, after a month or so, I got a report that there was no foundation; no action was to be taken and the matter was to be filed. Of course, I was not going to give in easily so I went up further and went to the civil commissioner and I complained to them. They investigated the report. It took about a year or so, and finally they said that nothing can be done.

1030

Now, an ordinary person is not going to spend all that time. She is a working-class person. She is working. She cannot take time off work and pursue this matter. I am retired so it is all right for me. Other people do not have the time. So they are not only afraid of the police to make a complaint at all in the first place; second, when they do make a complaint, it takes so long—if you could cut short the time—and third, after the investigation is done according to the act, the matter goes back to the police. First of all, it is investigated by the police themselves. That to my mind does not seem right, and my committee also feels the same way, that the police should not investigate themselves. Naturally, if there are some people who have done wrong and if you make a society of the same people again, they are not going to find their own person guilty. Even if he is guilty, they will try to cover it up—at least they are likely to do so, human nature being what it is.

I think the very idea of the police investigating themselves is not right. They should be investigated by somebody else or maybe by some other police officer. If it is the 41 division that has done something wrong, let the OPP come in, or let somebody from Halton or Durham or somewhere else try to look into it, if not a civilian person.

Finally, when the report does come out, as I see from the various provisions here, it again goes to the chief of police. He is the final authority. He is the one who decides whether he should deduct three days' pay or whether he should just tell him: "Look, don't do it again. To beat this man up is not right. Don't do it again, or I'll let you go."

That kind of power given to the chief of police is not correct at all. That power should not be. We have a judiciary system. The police lay charges against somebody if somebody does wrong, but the police do not decide; the case goes to court. It is a judge who hears evidence on both sides and he makes a decision. Why should we send a complaint which is investigated by the police, a party which is biased, back to the police again?

I have some statistics which I am sure you have. I got them over the phone, so I cannot vouch for their authenticity. I got them from the office of the public complaints commissioner. There were 594 cases closed in 1988, I am told—that means this is the number of complaints made—of which five are being heard by the board of inquiry. What happened to the rest? Well, 21 were resolved informally; 200 were withdrawn by co-operation—which means they were told, "Look, you'd better keep out; this is not good enough," or something like that—and 373 were investigated. I think a decision was made on 122, and out of them, six went to the board of inquiry; one was settled informally and five have hearing dates set.

What does that prove to us? There are a large number of people who are aggrieved, but, as I said before, they are not willing to come forward because they know what is going to happen. That includes me, because I have made a complaint and I have seen what happens. When we have some responsible people like the chief of police coming out and saying that you can be put in jail for five years although there is no provision in the law, but they say they can

lay criminal charges against them, that is not going to effect many people to come and complain against the police.

This unrest that we have today, a very grave unrest in the communities, is going to persist, unfortunately. I hope things like the race riots that we had in Britain will not happen here, but people are really getting tired. They realize that they cannot do anything against the government or the police. We have had the Race Relations and Policing Task Force report out for a few months. I do not see any action being taken so far. They are requesting it in the papers and otherwise.

The police associations also seem to be very strong. I notice that one third of the committee is to be recommended by the Law Society of Upper Canada, one third is to be recommended by the police—they are not supposed to be police officers, but they are recommended by the police—and one third is recommended by the council of Metropolitan Toronto. I would like to see some provision made that there be some minorities or that some people from the public will be able to sit on these boards of inquiry and do some justice to the people.

In subsection 11(6) you have this final report. It goes to the chief of police again for further investigation. In subsection 12(5) of the act it says that, in spite of the fact that the complaint is withdrawn, the chief can take further action. That seems like a good clause, but it looks like a public relations clause, because it has never been done. No chief of police is going to take action against a policeman if the complaint is withdrawn. The public perception is that no action is taken even if the complaint is not withdrawn. I see that the provisions are there, but they are never enforced.

In section 21 there is a lot of emphasis on the police associations being involved. I am again complaining that it is the police and you are consulting the police associations again and again. It is the public that should be considered, that should be consulted and that should be heard.

Finally, in subsections 23(16) and 23(17) you have these five days that will be taken off but three days' pay will be deducted. I think this makes a mockery of the whole thing. It depends on the offence or the seriousness of the offence, but I think it says a maximum of three days' pay, if I remember correctly. There is no mention of any dismissal or anything like that, any action of that nature being taken. I could be wrong but that is the impression I have. I feel that this legislation should have more teeth than it has at present. That is all I have.

Mrs LeBourdais: Thank you very much for your presentation. I will say that I am a new member to this particular committee today, but I would like to make some comments with regard to some of the comments you have put forward today, many of which I think are addressing discrimination and prejudice on the police force.

First let me say that although it exists on the police force, I think it exists in no greater abundance than in any other area of society. Police officers in this city tend to be of Anglo-Saxon heritage, for the most part, but there is certainly a very strong and aggressive attempt now to recruit individuals from all areas of our multicultural society here in Ontario. If you have had an opportunity to see the current recruiting poster, which shows a variety of ethnic groups and the fact that we have allowed our officers to now wear turbans, those who choose to, I think those kinds of things have helped in a small way to begin more of an opening up within the police force etc.

It always has struck me as somewhat unreasonable that when there are perhaps more open acts of prejudice during the heat of the moment when police are in the process of making arrests or breaking up some sort of skirmish, all of which happens extremely quickly under a great deal of stress, strain, pressure and outside circumstances, people yelling, people throwing things, etc, but later when it is analysed, it is always analysed under a very calm situation in the light of day. I do not know when you are analysing something after the fact whether you can ever truly appreciate the split-second judgement calls, with emotions running high, with tempers running high and with external circumstances affecting your judgement, with fractions of a second to make a decision. I think sometimes we fail to take that kind of thing into consideration.

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I represent a riding that is approximately 50 per cent Anglo-Saxon, but we do have a substantial East Indian and black community. I have been fairly involved within my community within the antidrug movement, and I think the police are doing all sorts of things within that particular movement which they are never given credit for. I cite specifically that there has been a program running this summer called rookie ball. I would say a very strong majority of the kids in that rookie ball program are black, yet the coaches have volunteered their time, police officers have come out and came out last Friday and spent all day with the kids and also joined us at the ball game. That kind of thing never seems to make the papers. Those particular five police officers, and I am sure there were a lot more but those particular ones who came out last Friday will never be given any particular credit for the positive role models they may have served as to those kids.

This society, I think, is far more integrated than most. It is by no means perfect. I think we still have a ways to go, but I think if we did not have some other external issues muddying the waters, namely, drugs, I think that in many cases we would have fewer racial issues if we could see that the drugs are at the basis of many of the racial issues that seem to flare up.

I guess in sort of making those comments that prejudice comes in a lot of odd ways. On the very first day I sat in this Legislature I was prevented from taking my seat in the Legislature by a white security officer from Queen's Park. I am not black-skinned, but I am a woman and certainly in this Legislature that makes me a strong minority. It was only after some time that I had to say, "Well, I am a member and therefore I am allowed into the House." That is a kind of comical example of prejudice, but—

The Chairman: It was Dalton McGuinty.

Mrs LeBourdais: I guess the difficulty presents itself that we all fall into categories when, from time to time, we come up against prejudice of some sort. Why that officer had to question me and not one of my male colleagues—he did not seem to be questioning any of the men, although there were as many new men; also certainly men who were younger than I. So I do not think it was necessarily an age factor, either. The point is, I was not allowed in; so I suffered a little bit of prejudice that day.

I do not think it is always something that is akin to skin colour etc. I guess in making some of these points, and definitely in defence of the police officers, particularly right now and again relating not just to my specific riding but to my area of Etobicoke and again in some of the items they are called out to look on, I think there is a natural fear. I think sometimes we

fail to realize that even though a cop is out on the beat and he or she is trained to deal with the eventualities that conditions on the street will present to them these days, you never eliminate the fear in anybody. Nor do I think you should, because fear is what will make them, hopefully, react quickly to a situation and hopefully their training will allow them to act not only quickly but correctly and in the manner that will be the best for all concerned.

I guess I am saying to you, we have come a long way in eliminating the prejudices etc; how do you feel we can go even further and continue to improve the situation? I think we all know it exists. I think it as good here as you will find most anywhere. Do you know other areas of the world that are doing a better job in this area and that maybe we could look to?

Mr Gupta: Can I make some points?

The Chairman: Certainly.

Mr Gupta: Thank you very much for your information. I am afraid I do not agree.

The Chairman: Do not respond to her question about other parts of the world, because the next thing you know, there could be a suggestion, "Let's go there," or something.

Mr Gupta: Yes, certainly. I just want to tell you that you mentioned there is a lot of improvement having taken place. I think last April, when June Rowlands presided over the granting of diplomas or degrees to these police cadets, if I remember correctly there were 56 people who graduated, of which five were nonwhite. How do you like this? Great improvement is taking place. I just quoted a statistic that 70 per cent of the people are non-Anglo-Saxon and here are 51; five does not even make nine per cent. Is it not ridiculous to say that we are improving? We are not improving at all.

What we are saying is that if out of 10,000 policemen there were one black 20 years ago and now we have five, we have 500 per cent progress. I am a mathematician myself; I can prove with statistics any percentage you like. That is what you are trying to say, that because from one we became five, look at the improvement we have made.

Mr Curling: When we get two, we have 100 per cent.

Mr Gupta: A hundred per cent. Now we have 500 per cent increase because one became five. There were no black policemen 20 years ago; there were none in the system. So we have come a long, long way.

The Chairman: Nor any short ones either. They had to be a certain height.

Mr Gupta: I have two police officers on my committee too, from 41 division. There is a kind of line between us. Your speech sounded just like one of them speaking. "Look, we had four per cent last year. Now we have 4.5. What a great improvement." If we go on like this, by the year 2500 probably we will reach 20 per cent. That is ridiculous too. You see, this is the kind of public relations stuff that the Anglo-Saxon community has been doing. "Look, what else do you want? You are doing well enough. You were never allowed to do this."

I had policemen telling me and other people, not in so many words: "Look, we let you in this country. You were starving back in India, or Jamaica, or wherever you come from, and you've got food on your table. You want to become policemen? You're expecting too much, my dear friend. Just stay low. Do all those cleaning jobs and the clerical jobs. You have a house; what more do you want?"

That is the kind of attitude that has been prevailing. I am sorry to say there is no improvement at all. The improvement is from one to five. Sure it is an improvement, if you want to call it an improvement, but at this rate, you will never be able to call this society any better than what it has been. The number of complaints against the police is mounting; it is not going down. You show me some statistics in which things are improved. There are more black people being killed today and being arrested.

You mentioned about the drugs. You seem to presume that only the black people are dealing in drugs. I mentioned that before. All our youngsters succumb to these temptations. There are so many white people who have been arrested. There was the famous case of those two women in Italy—a famous case that went on for more than a year. They were two white women from Toronto who had cocaine hidden in their suitcases. There are many white people who are in jails outside Canada for drug charges, in Thailand, in Singapore and all those places. This crime is not limited to black or white. It is limited to all those people who are greedy; they want to make money fast. I do not want to believe that it is only the blacks who are doing the drugs.

Mrs LeBourdais: Mr Gupta, if I could just interject, I would like to make very clear for the record that I am not of the opinion that drugs are strictly a black-related issue. I work very closely with the community on this issue. It is a fact that I have done my very best within my own community to change the minds of people who are of that opinion. Regrettably, in my area of Etobicoke it has been a false opinion that it is the case, but for the record, I would like to make very clear to you that I am not one who subscribes to that position.

I realize that drugs are pervasive in all elements of society and respect no colour, no creed, etc. For the record, I want that clarified.

1050

The Chairman: Mr Gupta, if we can go to other members. That way every member will get to ask questions, and then if you want to reply—

Mr Gupta: I had one or two points. She mentioned that split-second decisions are taken by the police. I do not agree entirely, because there are many cases like this church raid. It was not a split-second decision. It was well planned. The two police, Durham and Scarborough, got together and arrested them. Why could they not go to the church priest or somebody and say, "Look, we have some problem here and we're going to surround your church and your congregation and we're going to arrest some people"? That is quite all right; there is nothing wrong with that. They are not going to run away anywhere. But they disturbed the church, they arrested them right there, and just said there was some kind of theft involved, and they were the wrong people.

Finally, they apologized for all that, but that does not do any good. You can slap somebody on the face and say, "Well, I'm sorry," or you can loot him, you can waylay him, you can snatch his purse or something like that, or

rape a woman, and say, "Well, I'm sorry," but that does not cover up, in my opinion.

Mr Epp: Can I just interject for a moment? We can always think that these things happen only to coloured people, but I had somebody in my office yesterday who was complaining about the way the police were treating his particular organization and it was a white organization.

Mr Gupta: I never said that only black people are—I said the majority of cases. It is a question of proportion. We had an Italian the other day, about six months ago—I can go on for ever.

The Chairman: Mr Gupta, I am going to have to say let's go back to the members so that we do get them all in, and then we will respond. Otherwise, I think what we will be doing is responding to each individual member and those people who have put their hands up will never get a chance to ask a question. I think we will do that, with your permission.

Mr Kormos: In fact, we have all day, do we not, until four this afternoon? Great.

Mr Gupta, I do want to say this initially. You spoke of the problem that complainants face. I can tell you that this is not endemic to Metropolitan Toronto. I am speaking of the caveat of the public mischief charge. I suspect there are a few other people in this room who are very familiar with that: that is to say that when people seek to make a complaint about conduct of police officers or an officer, they are oftentimes—not always, and perhaps not even systematically, but oftentimes—confronted with that very avuncular sort of caution that: "What you've said here constitutes an allegation of a criminal offence, and should it end up to be unfounded, you may well see yourself charged. In fact, it's our policy to charge the Criminal Code offence of public mischief," and of course with the warning of the jail sentence that can accompany public mischief.

It is very persuasive, as you pointed out, to somebody who feels somewhat alienated from the system to begin with. As I say, I note your comment in that regard and I can tell you that it is not endemic to Metro Toronto.

Once again, that is something basically separate and apart from even this legislation. It is something that should be dealt with. There should be some leadership shown across the board, and perhaps even from the uppermost levels, from the Solicitor General on down, to indicate that that is not an acceptable response, no matter how, as I say, avuncular the tone is when it is given, because that particular tone can be oh so deceptive.

Clare Lewis was here yesterday and, as I interpreted or understood his comments, quite freely acknowledged that the system as it exists now in Metro Toronto does not appear from the statistics to be one which is horribly prejudicial to police officers; that is to say, he referred basically to the same type of comparative figures you have, with 594 complaints and the vast majority of them obviously being dealt with by way of no further action.

Really, how can that be very surprising when one looks at this scenario? Again, all of us will probably preface our comments by saying that most cops are good cops. I am not afraid at all to say that, and I have dealt with police officers in a whole variety of ways—

The Chairman: Is that just professionally?

Mr Kormos: —over a long and active lifetime.

The Chairman: This is the third confession we have had.

Mr Kormos: That is right. Is this committee not remarkable?

Most cops are good cops and they are committed. The vast majority are. I take some exception, because, quite frankly, calling somebody a nigger or a Paki in the heat of the moment does not make that comment any more excusable than if it is done in the course of a less than acceptable joke in a tavern when you are not angry but merely purportedly enjoying yourself, because it reflects an attitude.

Clare Lewis, in his report, points out that it is not so much a matter of whether or not the prejudice exists if the prejudice is perceived to exist. That is the problem the police in the community have to cope with.

In any event, back to your reference to the statistics. How can it really be very surprising, when indeed police officers, who are trained in collection of evidence, trained in rules of evidence and are very familiar with what it takes to prove a case—if a police officer is going to engage in wrongdoing, as compared to most of us he is going to be more immune not to prosecution but to investigation. He or she is going to know what his or her rights are more readily than a civilian. If they are going to engage in misconduct and want to conceal the fact or want to avoid successful prosecution, they are going to be able to resist the investigative process far more effectively, regardless of who investigates it. The fact is that they are more capable of successfully burying an incident of misconduct than is the average civilian.

You make reference to the pain an aggrieved person feels when he is unsuccessful in establishing what he claims to have happened. I appreciate that, but that is really akin to the pain victims of any other crime feel when they go to court and testify and notwithstanding that, hear a judge say, "Not guilty," when in their heart they know that those people who were accused did that break and enter or committed that assault or committed that rape or sexual assault, what have you. It is the whole matter of protecting innocent people rather than having an interest in excusing malfeasance.

I cannot think of any solution to the problem you speak of in that regard. Surely you do not want to see police officers who have not committed misconduct but who are the victims of false accusations—and I think we all have to concede that that is not only possible but is going to happen because of human nature—surely you do not want to diminish the rights of the police officer accused any more than you would want to diminish the rights of an accused person who has the finger pointed at him. I hope I have been sufficiently clear for you to respond.

Mr Gupta: First, I said before and I say it again, I am not saying that all police officers are bad. I said in the beginning, if you heard me, that the majority of police officers are good, they are considerate, they are helpful. But there are—they are in the minority but they are there—those who are not only racist but are aggressive, do everything possible under the book. They also steal. We have cases of shoplifting, we have all kinds of cases against them. The only thing is that they never get punished, because even the judges are very lenient towards them. It has been published in the papers.

Coming back to your question about the rights of the police officers, nobody is saying a police officer should not have a chance to give his side of the story. He should. Certainly he should be given a trial before a judge. Both sides have the right to appear. But here the judge happens to be a police officer himself. My complaint is that the person who is hearing the case is a police officer. He is investigating. He is one of them. He was a constable before and he has risen through the ranks. He can understand what has happened.

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The Chairman: It works both ways, though. When a police officer is being tried for misconduct, he is tried before a police officer as well, with much less generous rules of evidence and so on.

Mr Gupta: I think he should be tried before a court of law, just like everybody else.

The Chairman: I just thought I would raise that, because I think that is the other side of the coin.

Mr Gupta: You mentioned 594 and five. As I said, if civilians were investigating this and punishing them, then I would like to see if the 594 is five. If that is true, then it is absolutely true that the police are not doing any—I repeat again, I am not suggesting that all police are bad. I think most of the police are good and helpful. I have had very good police officers in my life, but I have had some very bad ones. I can mention again that once when I had this car, he said: "How do you have two cars? Show me your licence." I was in an apartment at that time. I said: "Under what law do you want me to show my licence to you or my ownership? I'm not driving a car here." Of course, he never knew I knew anything about the law. I think he was probably grade 10. At the time the admission requirement was very low; this was 20, 25 years ago. So I said, "Look, if you don't let me go out of this apartment, I'm going to report it to the police."

I did, and went to the sergeant. You know what happened? He said, "I'll just warn him." He detained me for half an hour, questioning me. I said: "Under what law are you questioning me? What right do you have to ask me to show you my licence if I'm sitting in an apartment? I'm not driving a car. I don't have to own a car to sit in an apartment." I am not saying every policeman does that, but there are quite a few. It is quite a few of those who make headlines and create problems.

Mr Kormos: One further question, Mr Gupta. You at least appear somewhat pleased with the recommendations of Lewis in the recent report on police complaints.

Mr Gupta: Yes, if they are adopted. [inaudible] whether they will be adopted at all.

Mr Kormos: I do not fundamentally disagree with Lewis, but I have a suspicion that notwithstanding whether the goals enunciated by Lewis can be reached, and I believe they can be—

Mr Gupta: I think they can be.

Mr Kormos: Perhaps, again, his recommendations as to how those goals be achieved warrant discussion and perhaps argument, but I am confident they can be reached.

What about this proposition, that even when you increase the quotient of minorities on the police force to reflect the reality of the community, the fact is that you have not substantially changed the nature of police forces and policing? I suspect what happens is that you have a co-option, you have develop the sense of a fortress mentality. Very much on the part of police there is a strong fortress mentality of "us against them," "us against the drug traffickers," "us against the B and E artists," "us against the rapists."

I have a feeling that even black people, East Indians, Asians, South Americans and people of all ethnic and racial ilk on our police forces are going to acquire that same fortress mentality, because there is still going to be the sense of, "We police officers are understaffed, underfunded, overworked, overwhelmed by civil libertarians on one side who are telling us to respect peoples' rights, and by the demands of victims and perceived victims on the other side who want us to catch the bad guys."

Is not a black police officer, an East Indian police officer, an Asian police officer going to feel that very same tension between demands that he get out there and catch bad people from the people seeking redress and, on the other hand, the civil libertarians who are saying: "No, you've got to respect peoples' rights. You can't search people on Yonge Street or at the Eaton Centre without doing the right things first, even if in your heart you believe they have drugs on them." How is the black police officer, the East Indian police officer, the Asian or the South American police officer going to deal with that fundamental problem with policing as we have it right now?

Mr Gupta: My submission is this first of all, as I mentioned before: The public has no confidence in the police as it exists today. They have been saying for years, "We are trying to improve." You are shaking your head at me. Of course, you are speaking for the white person, but I am talking of minorities.

Mr Kanter: Excuse me. There have been a number of public opinion polls taken in Metro Toronto by well-respected public opinion groups—the Environics Research Group is one specific poll I am aware of—that show the police force consistently has very widespread support from all segments of the population: the Anglo-Saxon segment of the population, the non-Anglo-Saxon white segment of the population, and the nonwhite segment of the population. With great respect, I would submit that on the basis of public opinion surveys your opinion is not correct.

Mr Gupta: I have a right to disagree.

The Chairman: Mr Gupta can, as any witness can, come before us and say what he believes.

Mr Kanter: He can say what he believes, but to represent it as the opinion of the public when the information shows otherwise causes me some concern.

The Chairman: I am sure it does, and I can understand why you have raised it, but if we were to be able to challenge every witness who appears before us on the basis of a public opinion poll, with all due respect, I think we impinge on what they can say.

I agree. I think it is on the record and it has been said.

Mr Kanter: Thank you, Mr Chairman.

The Chairman: Mr Gupta, we will perhaps move on to one of the other members. I think he has responded to your comment, Mr Kormos. If you do not feel he has, go ahead.

Mr Kormos: I think he was just getting around to it. It is up to him. I would really like to hear if he has anything to say.

Mr Gupta: I just want to point out that you have mentioned the rights of the police officer. I think, as I mentioned to you, he should have full rights, as well as anybody else. He should have the rights before the law. The point you are trying to make out of this is the same kind of argument that I heard when we were ruled by the British in India: "If you get your independence, you're not going to be intelligent governors. You'll be fighting among yourselves and you will not be able to improve your country at all. So let us rule."

The South African government says the same thing: "You're not capable of ruling yourselves." It is the same argument you are making: "Even if we bring in some blacks, we can't do any better, so let's keep it all white and let us rule, the way we have been doing it for years." That is the kind of message I get.

I have suggested to the police task force that for the next five years the recruitment of white policemen should be completely stopped until we have reached a certain level, a proportion of nonwhite people in the police force. Of course, it is not going to be accepted by anybody.

My point is that if you have a certain percentage of people in the police cars or on the beat, when the public perceives that they are also black, East Indian and others, then I think the confidence of the public will also change. The public will also start trusting the police a little more than it does now. They will not be so much afraid of them as they are today, and I think society as a whole will improve, because society should reflect the composition of the population.

This is not only in the police. I have been a teacher myself and I have seen in Scarborough the classrooms have a white teacher and 50 per cent of the children are nonwhite. They cannot get the jobs. The Ontario school boards are going to Australia, England and the United States to recruit white teachers but our teachers are sitting here doing supply teaching work. It is the same kind of thing. Of course, the public perception is: "You can't get to there. You can get a lower clerical job but you can't get a teacher's job or an administration job."

The Chairman: I do not want to restrict you, but I think we are going far beyond the—I know what you are saying, and the members understand and appreciate that, but I think we are going far beyond the area of this—

Mr Gupta: I emphasize these points. I was here also for the heritage—languages program. That law has now been passed by you gentlemen. We have been fighting five years with the Scarborough Board of Education, which would not allow the teaching of heritage—language classes, the same kind of thing. We have to fight. We have an uphill task.

Mr McGuinty: With regard to your concern about the police investigating themselves, to what extent do you think they should be permitted to be involved in investigating complaints against their colleagues?

Mr Gupta: In my opinion, they should not be involved at all.

Mr McGuinty: Not at all?

Mr Gupta: Other people should investigate them.

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Mr McGuinty: All right. We read in the paper, day to day in the Globe and Mail, about two situations before us. There are three doctors charged with malpractice regarding the death of a young boy eight years ago and there is another, a law firm, some of whose figures are being investigated.

We accept unflinchingly, notwithstanding the fact that some doctors are irresponsible thugs, some lawyers are irresponsible sharks and some university professors do not—

The Chairman: Now, just a second.

Mr McGuinty: The chairman doth protest too much.

Notwithstanding that, we realize that by virtue of the kind of medical knowledge, background and experience required for investigations into suits of medical malpractice, doctors do it. Likewise, with regard to law, lawyers do it, and indeed university professors do it.

The Chairman: Good, I am glad you are being truthful.

Mr McGuinty: You see, I come from another part of the province. In the two years I have lived in Toronto I have got the distinct impression—this is what I call kick-your-cop year. I respectfully suggest that what seem to me to be the rather extremist views that you express could be counterproductive.

I spent three hours the other evening with three senior policemen from Metropolitan Toronto, and I have made it my habit in the last five days to speak with six cops on the beat. I have a lot of friends in police forces in different parts of the province. There is no doubt that they are inner-directed and defensive.

You take a kid with grade 12 education, with all his formative training at the outset on the street. He becomes part of a team. He is sometimes browbeaten by smart-assed, trained-in-the-trade-of-law lawyers in court. He faces what appears to him, in the light of his limited legal experience, to be a paranoid obsession on the part of some people for human rights. He sees the revolving-door syndrome that some judges are involved in with regard to sentencing.

In Ottawa, we have the spectacle of one of my friends, the commissioner of the RCMP, before a parliamentary committee, ripped asunder, embarrassed, humiliated by charges of racism because he does not have enough French-speaking people in the force. The end result of that is that the police do become defensive and self-protective. I think the end result, one possible effect of this can-of-worms machinery that now costs the people of Toronto \$1.4 million, is that this defensive attitude of the police is going to be enhanced.

My police friends tell me that no one is more interested in cleaning up police forces than good policemen. Just as we recognize the medical competence of doctors, the legal competence of lawyers, likewise the professional

expertise of the policeman is to investigate. In my experience, no one is more concerned with cleaning up than good policemen. They realize they are dependent upon the co-operation of the public.

We do not have in Toronto what they had in Dallas a few months ago, where a young policeman was kicked to death on the street with 60 citizens standing around cheering.

Sir, I am quite surprised that you would even question that one third of this committee would be recommended by the police. You challenge that. Why? Do you think the police, through lack of professional honesty, integrity, would recommend only those who would be partial and biased? I think this constant attack that we have on the police is liable to be counterproductive.

There is no doubt there is a need. I have read the report on the hiring practices of police and so forth. I did not want to raise this point yesterday because I did not want to embarrass the commissioner. It is an otherwise very good report, very enlightening, a bit naïve, not thought through sufficiently, but with some good background evidence. I draw your attention to one paragraph on page 65:

"The task force takes unequivocal exception to the notion that employment equity 'lowers standards.' The phrase is merely an excuse for resistance to change, used to defend the status quo and vested interests. Moreover, it is an extremely patronising concept. It says expressly that visible minorities, or women, or whatever the excluded group may be, are, by nature, simply not good enough to be part of the institution. Bluntly put, the phrase 'lower standards' masks a particularly insidious form of élitism. It is code for 'white males only need apply.' This notion must be thoroughly rejected."

If this report were with regard to the hiring practices in Ontario universities, where I was a department chairman for 35 years, I would sue the writer of that report for slander. I cite this as an example of the kind of thing that is intemperate and extreme; likewise your comment that nobody has confidence in the police or the implicit assumption that if they are involved in an investigation, they will doctor the evidence or the implicit assumption that if they recommend members on the committee, they will recommend people who are biased.

I think that does the good cause that you are serving a disservice and compounds and provokes backlash from within the police themselves and from other parts of the community.

Mr Gupta: First, I think you have presumed a lot of things which I did not say. I would repeat that I did not say that all the police are bad. I think I said the police report that came out in the task force is a very good report, but whether it is going to be implemented is another question. I would like to see that it is implemented and I would like you to phone me and let me know what has happened. I would like to see this.

For years we have been promised by people like you and others, "Oh, yes, we are raising the percentage in the police." As I said before, we are raising it from one to five. What else do you want? It is the same kind of thing. I am not suggesting that they should all be changed overnight, but the point is that the rate of change is so slow that it will probably take 50 years before anything else happens.

I did not say that nobody has confidence; you misquoted me. I said the minorities which I represent do not have confidence in the police force. Just to quote one example, and I think for Mr Kanter too, there was a police rally a few years ago. The police drummed up people and phoned us and said, "Cops are tops," and all that kind of nonsense. They had a procession and 100 people appeared for the police. Out of a population of 2.5 million people in Toronto, there were 100 people out, and they were 99 per cent white, who said the police were tops. There are many more people. Why were they not joining the march and saying that the police were tops? Where were you, sir, at that time when you could have come and joined them?

Mr McGuinty: In Osceola in the Ottawa Valley. I was taking care of my farm in the Ottawa Valley.

Mr Gupta: Okay, if you are taking care of it, what about your family or other people? Your associates and friends were not there. One hundred people appeared out of 2.5 million people to support the police. Is that what you call support by the public? I would like see at least 10,000 or 20,000 on the streets saying, "Our police are doing a wonderful job." They were not there. On the other hand, we had a rally against the police and we had more than 100 people. We did not have 10,000 there but we had more than 100 people protesting.

So it is wrong to say that everybody supports the police. Everybody does not condemn the police, everybody does not support the police.

The Chairman: That is why I tried not to bring that in. You can have polls that say lots of things and do not necessarily—

Mr Gupta: As I said at the very beginning, why do we have this committee? Why do we have this legislation? Why do we need all this? If you think that the police are so wonderful and that they are doing a wonderful job, why do we need this police task force? Why was the police task force appointed in the first place? Why should we need it? We need it because there are complaints because the composition of the population has changed and because the people who are in the minority do have the confidence of the police. That is the reason we need it.

I am sure the police are improving. They also realize that things are not the same as they used to be, so things are changing. I am in touch with the police myself. I have two police officers on my committee and I understand. I know what they are doing. They are advertising on multicultural television now for police recruitment. It never happened before. They are telling me: "If you have somebody who wants to join the police force, come and tell me. I will try to help him." It never happened before, so I am sure something is happening.

The question is whether it is enough. Are we going far enough and are we satisfied with the rate at which we are proceeding? That is a question you have to ask.

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The Chairman: Mr Gupta, as I am sure you are aware, this committee is looking at the question of legislation that presently exists in Metropolitan Toronto and its extension outside of Metro. Many of the things you say certainly are very relevant to that issue, but I think we are getting just a bit beyond the field. I think I am going to move from the learned member from the Ottawa Valley to Mr Curling, if that is reasonable.

Mr Curling: Mr Gupta, I want to thank you for your presentation. The statement that sort of wakes me up a bit is: Have we come a long way? I would agree with you. It depends on where we are coming from and where we want to go.

I am not quite sure that we understand where we want to go. Keep in mind, sir, that we are looking at a population that has changed dramatically because of its composition and the type of people there—the type of people meaning the different orientation, the different cultures and the different disciplines in which they gather together in this city of 2.5 million—and that we have enforcement of laws that must reflect those people. The laws must be reflected and the enforcement must follow suit.

It brings a very difficult role for the enforcer. First, he must understand who he is enforcing it on. He must understand those individuals, and that becomes extremely difficult. I think, sir, that this government has the opportunity to show some leadership in all of this, to listen very attentively to representations, like what you have said, and not just to flippantly sort of assume that certain incidents that you have raised would be incidents of: "Oh, it is a personal thing, and it will not happen again."

As you said, some of the harassments by police over the past years have been brought to the attention of governments and police before. It was ignored, and that is where a pattern developed all of a sudden. I would say that some governments will respond how politicians respond to it, quite possibly—I hope it is for the betterment of society and not for votes—not to say, "I am responding so we are a sensitive government."

I think that the Tory government in the past would have responded too. Roy McMurtry is seen as the saviour in all this. But we have another Attorney General who may come and say: "Of course, we will respond to this and we are the saviour. If that expresses itself in votes, all the better for amassing power." I am sure that if the New Democratic Party had got in power, it would have responded in that way too.

But to understand the society that we have is most important, and those who we ask to enforce those laws must be properly trained. Speaking to many police officers, Mr Gupta, I gather that they feel too that they are inadequately trained. It is very important how they respond to society itself.

I am concerned too about whether we have come a far way. I say we have not. We have responded to different situations as they come along. Of course, the intrusion into a religious service that was being conducted in Scarborough and the manner in which the police exercised their duty was appalling. I was very much pleased to know that the police had apologized afterwards and said they were wrong.

We have seen the handling by police officers of some of the black community ending up in deaths, the matter to be handled, and it now comes to investigations that have proven that, yes, in some cases excessive power was used to do that. Police officers have complained to me and said that even when they carry out their duty, the court system is not adequate enough to accommodate all the arrests so that justice can be seen to be done in a process. People wait a long time.

I would urge, Mr Gupta, as you have done, most of my colleagues to visit the juvenile courthouses from time to time and see who is there and how justice is being handled. Many of my colleagues here are lawyers. We saw Mr Lewis here yesterday, who is a lawyer, who was a judge and who is now sitting

as the public complaints commissioner. We have seen it from a different perspective.

What happens here most of the time with presentations, when individuals like yourself bring your evidence forward, is that politicians get into comments and speeches and all that. Maybe it is a good opportunity to do so. It is a good opportunity for you also to see where we are coming from in that respect.

I understand very much what you are saying. I have seen situations in Scarborough, which is really a microcosm of what Ontario is all about. There is a highly concentrated Chinese community, a highly concentrated East Indian community, a highly concentrated black community. To top it all, it is the bastion of where the white Anglo-Saxons have established themselves in Agincourt. How we deal with that is quite an example of how we will see Ontario or Canada develop itself in that way.

I am one who is extremely against the quota system that you speak about. I feel that black policemen can be as racist as white policemen, and Indian policemen and Asians can be as racist as white policemen. It may be even worse so, because of the expectation we feel because of the qualification of the colour when they come forward to the door. You realize you get the reverse treatment.

I would say too that training is an extremely important part of all this, and the infrastructure that is in place is important. I am talking about an infrastructure where the situation that the policeman is investigating is erupting because of lack of jobs, lack of opportunities and, therefore, the conflict exists there.

I hope that your presentation here is heard by my colleagues, and I am sure it is. We have heard many, many presentations here and it is taken in the manner that it is given. I do not hear you saying that all policemen are racist, but I know that sometimes emotion gets in the way. I know all my colleagues here and they have their hearts, I would say, in the right place. It is for the understanding of that—when we put a law in place here, we know it will not be the perfect law because we never arrive at perfection.

In summary, the final part of what I am saying is that the changes in immigration and emigration within Toronto are happening so fast at certain different levels, to different people, that no matter what it is, we will find problems in it. We will find police officers who want to address the issue the best way they can.

I made a comment yesterday, and you somehow raised it and my colleague here raised it, that we have, for instance, a social problem of drugs in this society and a police officer may investigate or may cordon off an area in which to address the problem of drugs where it is seen to be concentrated. Getting into that area, the police may encounter a certain community, a concentration of East Indian or a concentration of blacks; not understanding the black culture or whatever that black culture would be in that situation, they have to deal with the cultural dynamics of it and not the drug dynamics.

By the time they deal with the cultural dynamics, they have lost the issue. The concern that they went there for was for the drugs. I am not talking about a hypothetical case; it is an actual case that happened. I tell you, sir, we will lose the drug war, because the enforcers do not understand the cultural dynamics of it all. If we are going to draft a law that reflects that, you must be sensitive and understand it cannot be perfect.

Mr Gupta: Could I just make a small comment, sir?

The Chairman: Sure.

Mr Gupta: I want to point out that I do not expect all the black, East Indian or other minority group policemen, when they get appointed, to be perfect. If I have given that impression, then I stand corrected. I mean they are as human as the white people are. They are subject to the same kind of greed, lust and power hunger and do the same abuse of power as anybody else. They are not any different from any of the policemen. I am not suggesting that there should be a quota system. What I am suggesting is there should be a greater number of people appointed more speedily so that the public would have more confidence in the police.

The Chairman: Thank you very much, Mr Gupta. If I could just add one thing, prejudice really does not have any parameters. We have come a long way in the police department in terms that at one time policemen had to be a certain height and a certain ethnic background or whatever. We have overcome that.

You speak of 70 per cent of the people in Metropolitan Toronto being non-Anglo. If we were to enlarge the police force to be 70 per cent non-Anglo, would we then have the people who are Anglo back saying, "We have lost the confidence of the police because we are now the minority"? I do not think the answer is numbers. I think the answer is piercing the corporate veil of ignorance. That is really what it is all about.

I think that the things we were told by the commissioner in terms of providing for this complaints board have had a significant impact on the number of cases that have in fact had to be dealt with because that board is there as that sort of remembrance to those officers who might act out in an inappropriate way, that they might find themselves before it. Just by being there, it has had a significant impact.

For my own riding, we have two officers out in Peel region who I think get caught in some of the comments and the rhetoric that comes out about racism. They were the two gentlemen who wrote the book on how to instruct officers to understand various different cultural backgrounds and needs and so on. It hurts me somewhat to see two gentlemen out there who put a great deal of effort into that, to simply be caught up in this melee that there is, this racist attitude.

As I say, racism is ignorance, and ignorance you do not deal with by changing numbers or by increasing one group over the other. What you do is you deal with it by reason of trying to understand one another. I suppose if we could do that in its purest form, we probably would not even need a government. We would not need anybody to govern us.

Thank you for coming before us. We are striving, as all the members here, I think, have pointed out, just to try to create a bill that is going to protect people in the future. We would like to thank you for taking the time to come here today.

Mr Gupta: Thank you very much for letting me present my views to the committee.

The Chairman: Thank you. We stand adjourned sine die, since there is nothing further. Thank you very much, committee members. Have a good summer for what is left of it.

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